Paying the IRS - Offers in Compromise

The IRS Restructuring and Reform Act of 1998, along with the negative publicity on the IRS coming out of the Congressional hearings that preceded the new law, has created an unprecedented opportunity for taxpayers with tax liability problems. At no time in the history of tax collection has the IRS been more willing to compromise on tax liability rather than to go through collection procedures that might create bad press for an agency already on the outs by many in Congress. Although the IRS is still not willing to "give away the store" to anyone with an outstanding tax liability, those who have genuine trouble paying now have a better chance than ever of striking some sort of compromise with the IRS if certain procedures are followed.

Often, the compromise that the IRS is willing to make takes the form of installment payments to pay off the tax liability over time. This is particularly useful because it prevents the IRS from liquidating major assets, such as a home or a retirement fund, which can be devastating, both financially and emotionally, to the taxpayer. Terms can be rather generous. But if a taxpayer can't swing an installment deal with the IRS, his or her financial situation may be such that an "offer in compromise" may prove to be an even better alternative. An offer in compromise actually lowers the total amount of liability outstanding, usually in return for a commitment to pay this reduced amount over a period of years. In addition, offers in compromise have also become a preferred way for the IRS to avoid litigation expenses when a taxpayer has at least some argument under the tax law as to why a tax liability is not owed, in part or in full. Whether an offer in compromise is based on "doubt as to collectibility" and "doubt as to liability," the rationale behind the IRS's seemingly generous spirit is that, under the new rules on collection, it may be better off accepting something now than risking getting nothing in the future. Further, the IRS is now under a Congressional mandate to make offers in compromise generally more accessible to taxpayers.

If you decide to make an offer through the IRS's Offers in Compromise program and the IRS accepts, you end up paying the lesser amount in full satisfaction of your tax liability. The IRS cannot collect the additional tax from you. It can accept an offer only if there is doubt whether the tax liability exists or doubt whether the tax can be collected. A doubt as to collectibility must be supported by a Collection Information Statement (IRS Forms 433-A or B) which requires disclosure of a taxpayer's assets. The offer in compromise itself is made on a separate form.

The IRS Restructuring and Reform Act of 1998, in addition to putting the heat on the IRS to tone down its collection tactics, requires the IRS to develop employee guidelines for determining whether a proposed offer in compromise is adequate and should be accepted to resolve a dispute. These guidelines form the official rules of conduct for IRS agents in offers in compromise situations. They include rules for the consistent application of national and local allowances under which IRS employees may determine the basic living expenses of a taxpayer entering into a compromise. Moreover, an IRS agent is now prohibited from rejecting an offer from a low-income employee, and others, solely on the basis of the amount of the offer.

A preliminary consideration for someone making an offer is whether to use assets to make estimated tax payments that are due rather than holding the assets to increase an offer. This is because the IRS cannot accept an offer in compromise if tax returns are not current or if tax liabilities aren't being paid as they accrue.

Of course there are some disadvantages to making an offer. For example, you make it easier for the IRS to identify property that it can seize and levy upon (although the 1998 legislation prohibits the IRS from levying against property while a compromise offer is pending). Further, the offer usually operates to extend the statute of limitations. Still, in many situations, the offer in compromise route may be the only way to go.

We can figure what amount to offer and explain how to go about doing it. Please do not hesitate to call if we can assist you.