

Strategies for Avoiding OIC Blindspots & Rejections

2023 Training Event 5 | Angelene Wierzbic, EA, CTRS

2pm Eastern | 1pm Central | 12pm Mountain | 11am Pacific

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Spring Conference 2023

Thursday, May 11th 2023 | Virtual

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The “Last Known Address” Rule

Presented by LG Brooks, EA, CTRS (1 Hour)

Negotiating With The IRS

Presented by Steve Klitzner, ESQ., CTRS (1 Hour)

Protecting Your Client from the IRS Reducing a Tax Lien to Judgement

Presented by Angelene Wierzbic, EA, CTRS (2 Hour)

Tell Tale Signs of Bad Clients

Presented by Larry Lawler, CPA, EA, CTRS (1 Hour)

Best Practices For Mitigating An IRS Levy Or Wage Garnishment

Presented by Billy Fauller, III, EA, CTRS (1 Hour)

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Expert Strategies for Avoiding OIC Blindspots & Rejections

Angelene Wierzbic, EA,
CTRS



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Offer in Compromise Basics

What is an Offer in Compromise?

- An Offer in Compromise is a contract

Legal Definition of a contract:

- An agreement between parties creating mutual obligations enforceable by law

Where Can I Find the Contract?

Read the Form 656 Offer in Compromise for the Contract Terms

- Updated annually (usually April)
- Changes made every year
- Current Version in Section 7 of the 656

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How Can the IRS Oust an OIC?

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Return

Sent back to the t/p without being evaluated for acceptability. If it is returned it is considered *not processible*.

****No Appeal Rights****

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Form 656 (April 2023) Offer in Compromise

Department of the Treasury — Internal Revenue Service

To: Commissioner of Internal Revenue Service

In the following agreement, the proposed "yes" may be assumed in place of "I" when there are joint liabilities and both parties are signing this agreement.

I submit this offer to compromise the tax liabilities plus any interest, penalties, additions to tax, and additions to tax required by law for the tax year and periods marked in Section 1 or Section 2 below.

Did you use the Pre-Qualifier tool prior to filing out this form? Locate the tool on our website at <https://www.irs.gov/offer> or by scanning the QR code on your smart device.

Yes ☐ No ☒

Note: The use of the Pre-Qualifier tool is not mandatory before sending in your offer. However, it is recommended. Include the \$205 application fee and initial payment (personal check, cashier's check, or money order) with your Form 656 unless you qualify for the Low-Income Certification. You must also include the completed Form 433-A (OIC) and/or Form 433-B (OIC) and supporting documentation. You should fill out either Section 1 or Section 2, but not both, depending on the tax debt you are offering to compromise.

Individual Information (Form 1040 filers)

If you are a 1040 filer, an individual with personal liability for Excise tax, individual responsible for Trust Fund Recovery Penalty, self-employed individual, or individual personally responsible for partnership liabilities, you should fill out Section 1.

Your first name, middle initial, last name: Imma Pour

Spouse's first name, middle initial, last name: _____

Address (street, city, state, ZIP code, county of residence): _____

Social Security Number (SSN), Individual Taxpayer or Identification Number (ITIN) (if applicable): 111 - 11 - 1111

Social Security Number (SSN), Individual Taxpayer or Identification Number (ITIN) (if applicable): _____

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Rejection

IRS considered the OIC processible, reviewed the calculations and determined that the t/p:

- Could pay more than the OIC calculation, or
- Could full pay, or
- Accepting the OIC is not in the best interest of the government.

T/p has right to appeal

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Default

- The t/p fails to meet the terms of the contract. After the OIC is accepted, the t/p does not keep up with their contractual obligations.
- The t/p's debt is reinstated plus accrued penalties and interest to date with no appeal rights.



Tammy, I told you to pay by the deadline and not to fill out for that Online Payment Agreement.

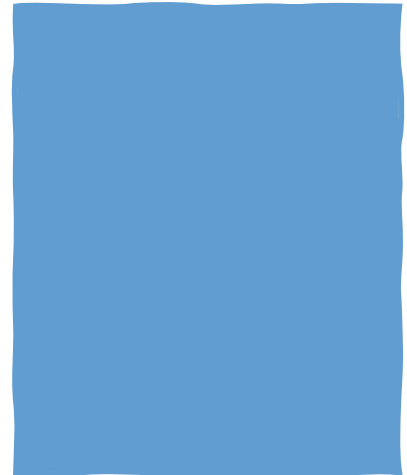
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The Contact: What is Each Party Giving Up in an OIC?



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Allow the acceptance of the agreed amount for the tax periods listed on the Form 656



Foregoing the right to continue collection in most cases



Releasing liens upon full payment

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The IRS



Possibly release of levy when OIC is processable



Guaranteed Acceptance Terms (24-month Rule)

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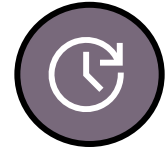
The IRS

The Taxpayer

Offers to pay all available equity and some future income to settle their tax debt



Agree to future compliance



Agreeing to extend the SOL



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The Taxpayer

No ability to dispute the debt



Potentially giving up refunds during the processing of the OIC (hardship acceptance)



Allows the IRS to keep funds submitted during the OIC

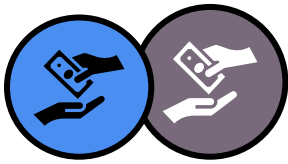


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IRS/Taxpayer Agreed OIC Calculation

2 Aspects to calculate an OIC

Taxpayer Asset Values

- Liquid assets at 100% value
- Non-Liquid assets reduction (20%)
- Less Encumbrances
- Less Exclusions
- Less Tax Implications

Taxpayer Income

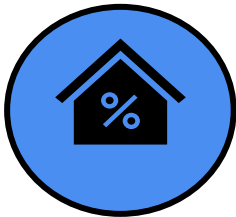
- Less Expenses
 - Health & Welfare or
 - Production of Income
- Inclusion of Standards
 - National Standards are givens
 - Local Standards are limitations
- Net leftover income is multiplied by 12 or 24 month Factor

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IRS Foregoes Right to Collection

- 🏠 IRS will write off remaining balances after the OIC is paid in full
- 🏠 Settles the debts for good unless the t/p defaults

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IRS Releases Liens IRM 5.19.7.8.9

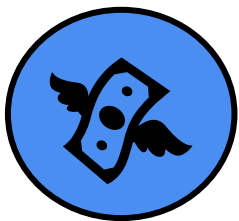
- ⚖️ IRS will release lien within 35 days if final OIC payment
- ⚖️ If t/p has not full paid OIC and sells property IRS may be entitled to full proceeds to pay the liability
- ⚖️ If t/p defaults, IRS may revoke Certificate of Lien Release

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IRS Releases Levies IRM 5.19.7.8.5

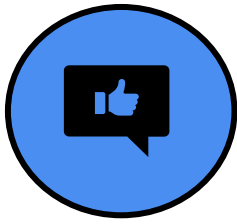
- ✂️ IRS will generally release levies once the OIC is deemed processable
- ✂️ If continuous levy (ex: wages or social security) the IRS has the ability to decide to retain or release the levy

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IRS Deemed Acceptance of OICs

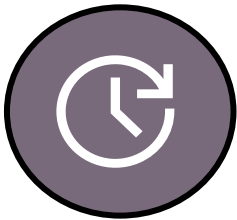
If IRS receives your OIC, deems it processable and does not respond within 24 months of receipt, it is automatically accepted

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Taxpayer to Maintain Future Compliance

- ⌚ T/p agrees to file and pay timely for 5 future years including the year of acceptance
- ⌚ No Installment Agreements or additional OICs during that time period
- ⌚ Any tax years/debts omitted from the OIC need to be promptly paid

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Taxpayer Allows IRS to Extend the Statute of Limitations

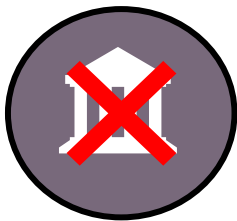
- 🕒 T/p agrees to extend the Assessment statute for the time the OIC is pending plus 1 year
- 🕒 T/p agrees to extend the collection statute for the time the OIC is pending
 - 🕒 Additional 30 days if rejected
 - 🕒 Plus, any time in appeals

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Taxpayer Loses Ability to Dispute the Debt

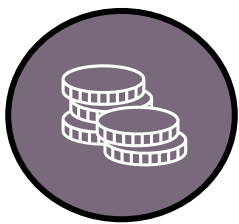
- 🏛️ T/p gives up right to claims or refund or ability to challenge the debt in court after acceptance
- 🏛️ T/p cannot file amendments on years settled in an OIC
- 🏛️ T/p agrees not to file amendments while OIC is pending

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Taxpayer Gives Up Refunds

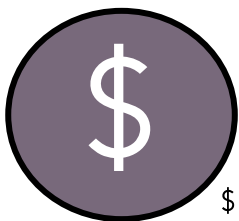
- ☞ Refunds are not considered payments
- ☞ T/p will return any amendment refunds in 30 days if amended return was pending prior to OIC submission
- ☞ IRS will keep refunds while OIC pending unless hardship exists – IRM 5.19.7.10

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Taxpayer Allows the IRS to Keep Payments

- \$ T/p cannot get back any OIC payments made even if rejected or t/p withdraws OIC
- \$ If t/p overpays on last payment IRS will keep extra funds
- \$ If the IRS erroneously offsets a refund for the acceptance year, the t/p can either apply as a payment toward the accepted OIC or refunded.

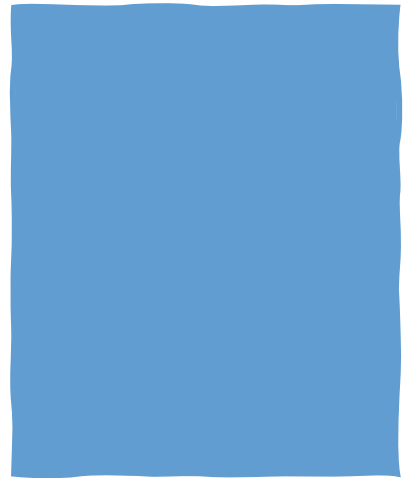
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Things that will get your Offer returned before processing



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Compliance



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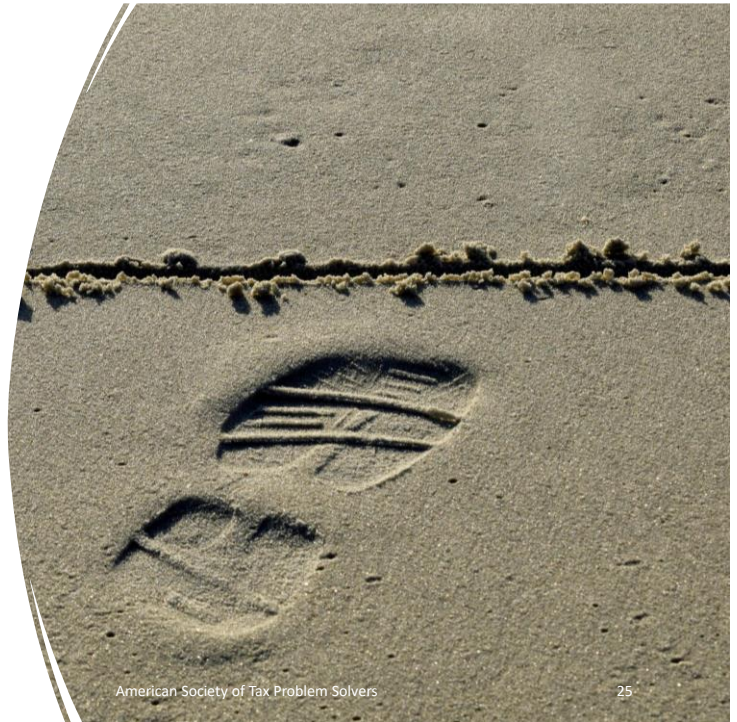
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Compliance Aspect #1

File all necessary returns

Policy statement P 5-133 allows for t/ps to be complaint by filing the most recent 6 years, unless managerial approval allows a Revenue Officer to ask for older years. **IRM 1.2.1.6.18**

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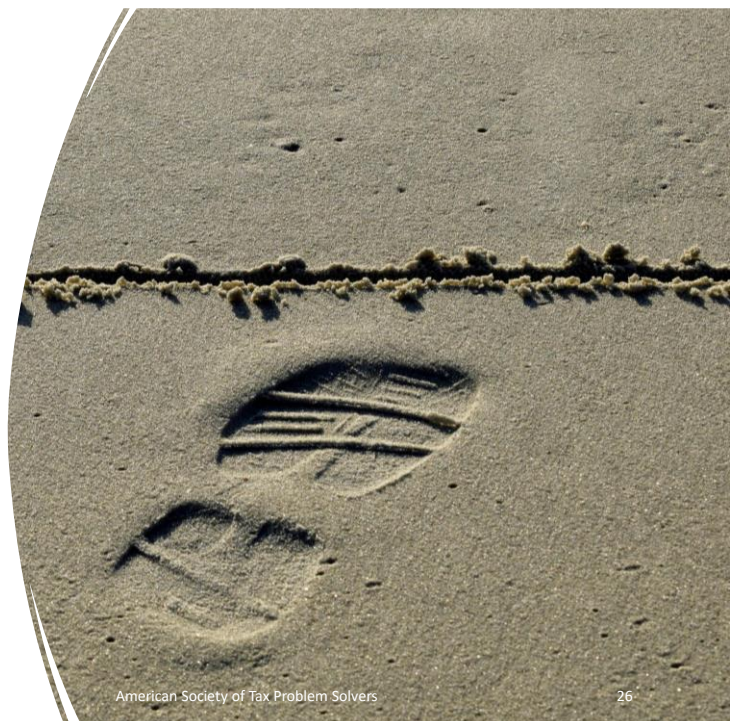
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Compliance Aspect #2

The IRS wants to see the t/p stays current. They must have adequate:

- Estimated tax payments or Withholding

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Compliance Aspect #2

For businesses with employment taxes, they must be current in this quarter plus have paid the tax in the prior two quarters.

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Hidden Compliance Issues

Outside entities or t/ps affiliated with the one requesting the OIC must be compliant

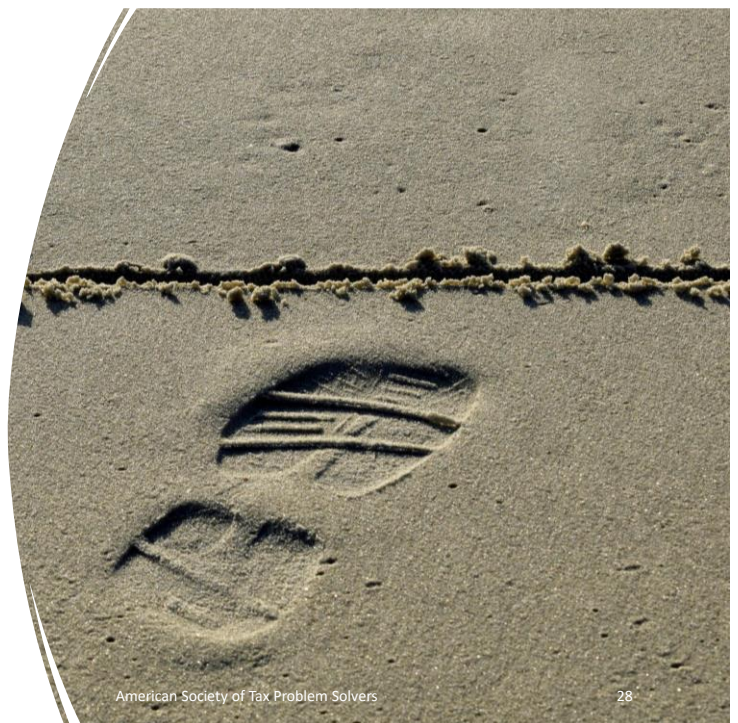
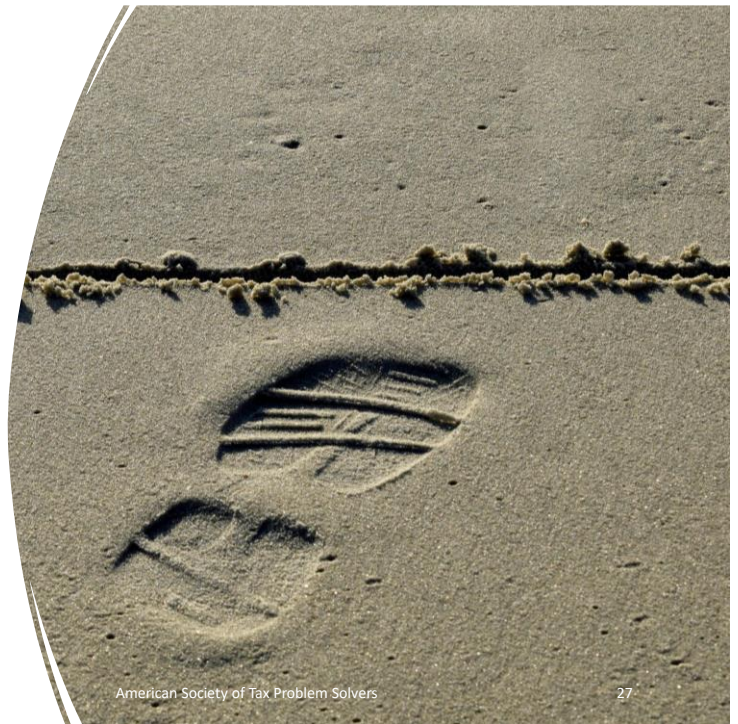
- Shareholder/Partner Compliance
- Officer Compliance
- Fiduciary Compliance

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A bronze statue of Lady Justice, blindfolded and holding scales of justice in her right hand and a sword in her left. A wooden gavel with a gold band is positioned in front of the statue. The background is white.

No Tax Liabilities

- If there are no assessments with a balance on account when the IRS receives the OIC for processing
- At least one assessment must be in place to request the OIC.

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A bronze statue of Lady Justice, blindfolded and holding scales of justice in her right hand and a sword in her left. A wooden gavel with a gold band is positioned in front of the statue. The background is white.

Also, when the
Judicial Branch or
an outside
department can
oversee the case

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Bankruptcy

- Debts to be resolved in Bankruptcy Court
- If t/p files Bankruptcy before accepted OIC paid in full IRS can put in claim for full amount of Tax Penalties & Interest
- Check the status Centralized Insolvency Operations 800-973-0424
- OIC is a great tool for post bankruptcy debts

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Civil or Criminal Matter

If the IRS has referred the t/p, or there is a Civil or Criminal matter regarding any of the liabilities in the hands of the Department of Justice

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Not Able to Compromise

- Liabilities relating to restitution
- Liabilities relating to income under IRC §965 (tax relating to deferred foreign income) are unable to be resolved by OIC.

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Open Audit

- Will return while audit is pending
- DATC OICs *can be* accepted during an open audit, BUT if IRS appeals has a potential chance at control of the case then they will not proceed
- Audit needs to be resolved to post assessments

Polling Question

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Employment Taxes & Trust Fund Recovery Penalty

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Basics of Employment Tax Issues

Payroll taxes come in 2 parts

- Employee Responsibilities
 - Federal Withholding
 - Social Security
 - Medicare

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Basics of Employment Tax Issues

Payroll taxes come in 2 parts

- Employer Responsibilities
 - Social Security Match
 - Medicare Match
 - Federal Unemployment

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Trust Fund Recovery Penalty (TFRP)

The business is required to make sure the employee taxes make it to the government

If they do not, IRS can assess a Trust Fund Recovery Penalty (TFRP) on any party deemed responsible and that willfully didn't remit these funds

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TFRP Impact on OICs IRM 8.23.3.6(3)

For OICs relating to businesses:

- If the employment taxes are being settled, then either:
 - The Trust funds must have been paid by the business, or
 - TFRPs must be assessed, or
 - TFRPs have been submitted by collections for assessment

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Other Reasons for an OIC Return

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Payment Terms

IRM 5.19.7.2.1

- T/p missing a payment could cause a return, withdrawal or default
- Possible payment terms
 - 24 monthly payment
 - 20% down and remainder within 5 months of acceptance
 - Low-income certification & full pay within 5 months of acceptance

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OIC Returns

- The t/p did not include the filing fee, 20% down for cash offers, or 1st monthly payment for periodic payment OICs
- If the t/p does not qualify for low income and does not submit payments.
- OIC will be returned if not corrected within 30-day grace period.

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OIC Returns

T/p filed DATL & DATC OICs at the same time/or filed one while the other was open IRM 5.8.10.14

- IRS may return one or both of the OICs based on processability
- T/p may be required to withdraw DATC OIC if DATL is being processed and reviewed

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Bad OIC Returns

Frivolous Position- IRM 5.8.10.13

- Subject to \$5,000 penalty



Solely to Delay

- OIC used to stop collections when t/p not truly eligible
- Revenue Officer can issue Form 657

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OIC Defaults

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Non-Compliance

- T/p does not maintain the 5-year filing & payment compliance window after acceptance.
- If the t/p requests an installment agreement during the compliance window it defaults the OIC

Amendments



Per the OIC contract if the t/p files an amended return for any tax year listed on the form 656, it is grounds for termination of the OIC.

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Refusal to Return Erroneous Refunds IRM 5.19.7.10.2



If the IRS sends the t/p a refund in error, they will contact the t/p by mail. If the t/p does not return the refund back to the IRS, they will deem the OIC defaulted.

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Death of a Taxpayer Can Default an OIC IRM 5.19.7.4.7



- If t/p dies and the OIC was accepted but not paid, or
- OIC was accepted, paid, but t/p didn't make 5-year compliance window, or
- On a joint OIC and the deceased t/p's spouse is not in compliance

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Recission of an Offer IRM 5.19.7.4.14



If the t/p provided false documents, information, concealed assets or made mistakes of material fact the IRS can default the OIC

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Key Take Aways:

1. OIC is a contract
 2. Keep your clients compliant
 3. Watch for issues before you extend the SOL with an OIC
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Following up with your clients could be the difference between a good OIC and a bad one

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2pm Eastern | 1pm Central
12pm Mountain | 11am Pacific

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