

#27 IMPROVE OFFER IN COMPROMISE PROGRAM ACCESSIBILITY BY REPEALING THE PARTIAL PAYMENT REQUIREMENT

Present Law

IRC § 7122(a) authorizes the IRS to settle a tax debt by accepting an offer in compromise (OIC). According to IRS Policy Statement 5-100, the IRS will “accept an offer in compromise when it is unlikely that the tax liability can be collected in full and the amount offered reasonably reflects collection potential.” Taxpayers must also file and pay their taxes for five years after an offer is accepted, as provided by IRS Form 656, *Offer in Compromise* (2017) (item j).

IRC § 7122(c)(1)(A) requires a taxpayer who would like the IRS to consider a “lump-sum” offer — payable in five or fewer installments — to include a nonrefundable partial payment of 20 percent of the amount of the offer with the application. IRC § 7122(c)(1)(B) requires a taxpayer who would like the IRS to consider a “periodic payment” offer — an offer payable in six or more installments — to include the first proposed installment with the application and continue to make installment payments while the IRS is considering it. In addition to these partial payments, Treas. Reg. § 300.3 requires offer applications to include a user fee. Taxpayers with low incomes — less than 250 percent of the Federal poverty level — can apply for a waiver of the fee and the partial payment requirement.

Reasons for Change

By accepting an offer, the IRS collects money it would not otherwise collect and turns a noncompliant taxpayer into a compliant one by requiring the taxpayer, as a condition of the agreement, to timely file returns and pay taxes for the following five years. The Treasury Department’s *General Explanations of the Administration’s Fiscal Year 2017 Revenue Proposals* acknowledged the benefit of offers by proposing to repeal the partial payment requirement, explaining that it “may substantially reduce access to the offer-in-compromise program. ... Reducing access to the offer-in-compromise program makes it more difficult and costly to obtain the collectable portion of existing tax liabilities.” The Treasury Department estimated that repealing the requirement would have a positive revenue impact.

A 2007 TAS study found that taxpayers above the low income threshold were no better able to afford to make partial payments than those below it, and that those below it frequently did not obtain a waiver. Similarly, a 2005 Treasury Inspector General for Tax Administration report found that when the IRS first imposed a \$150 OIC fee in 2003, offer submissions declined by more than 20 percent among taxpayers at every income level. Thus, the partial payment requirement likely decreases collections and increases enforcement costs.

Recommendation

Amend IRC § 7122(c) to remove the requirement that taxpayers include a partial payment with “lump-sum” and “periodic payment” offer applications.¹⁰⁸

¹⁰⁸ For more detail, see, e.g., National Taxpayer Advocate 2006 Annual Report to Congress 507-519 (Legislative Recommendation: *Improve Offer in Compromise Program Accessibility*). H.R. 4994, 111th Cong. § 202 (2010) (as passed by the House), H.R. 4912, 114th Cong. § 206 (2015), and H.R. 2171, 115th Cong. § 206 (2017) contain language that is generally consistent with this recommendation.