

From A Former Revenue Officer: How to get your Office in Compromise Accepted

By Jeff McNeal

During my tenure as a Revenue Officer at the US Department of Treasury, I was the point of contact for Offers in Compromise (OIC). I had the opportunity to see lots of great and not so great offers, with the largest case being a taxpayer who owed \$100 million to the IRS. This article will explain how to draft a winning offer and bring higher acceptance rates to your practice.

The IRS developed the OIC program for taxpayers who cannot pay their tax liability without provoking significant financial difficulty. In 2018 alone, the IRS accepted 24,000 offers, which amounted to \$261.3 million, but rejected 34,000 others. The acceptance rate is currently fairly high as it has increased from 25% in 2010 to around 41% in 2018. As a result, accountants need to evaluate several elements to build a successful case.

Is OIC a fit for your Client?

A good rule of thumb is that the IRS is likely to approve offers that propose the presumed maximum amount of money they can expect to collect within a reasonable time period. The taxpayer will need to demonstrate one of three things:

1. That they cannot pay the full tax debt owed (Doubt as to Collectibility)
2. That the tax is not actually owed (Doubt as to Liability)
3. That another unique situation applies where an offer is in the best interest of both your client and the IRS (Effective Tax Administration).

When it comes to specific eligibility requirements, the taxpayer must:

- Have filed all tax returns
- Have received a bill for at least one tax debt included on their offer
- Make all required estimated tax payments for the current year
- Make all required federal tax deposits for the current quarter (if they are a business owner with employees)

The IRS will investigate both what is reported on the [Form 433-A \(OIC\)](#) along with numerous factors including income, expenses, asset equity, lifestyle, age, level of education, and Collection Statute Expiration Date.

If the applicant's lifestyle is contradictory to the fact that they can't pay their taxes, it may be a serious problem obstacle for approval. If that is the case, you may want to look into installment agreements and pay particular attention to the Six-Year Rule in combination with the One-Year Rule (IRM 5.14.1.4.1).

Tips for Applying

Forms you will need:

- [Form 656](#) (Offer in Compromise) - Required to make the offer.
- [Form 433-A](#) (OIC): Collection Information Statement for Wage Earners and Self-Employed Individuals - Helps the IRS determine the nature and extent of the financial hardship.
- [Form 433-B \(OIC\)](#): Collection Information Statement for Businesses - This is a form similar to Form 433-A (OIC), but for businesses.

Mistakes to avoid:

- **Math errors on form 433**
 - This form requires a significant amount of complex calculations and it is imperative to get it right. If something is calculated incorrectly, the whole OIC process comes to a screeching halt until the mistake is sorted out.
- **Leaving blank spaces**
 - I saw a lot of blank spaces in forms 656 and 433 but there was no way to know why it was left blank. It is better to write either “N/A” or zero in these spaces.
- **Writing negative equity**
 - Another frequent mistake is when a taxpayer’s property was worth less than they owed on it, they would subtract that negative equity from the taxpayer’s net realizable equity (NRE). While this may seem helpful for your client’s case, you cannot do it. Any asset with a negative equity should be reported as zero.

The most important thing you can do when you apply is to be sure you can back up the foundation of your client’s case with facts and IRM references. I can’t emphasize enough the importance of using the IRM to support your claims.

Negotiating the OIC

If your client’s OIC is rejected, it is possible to submit an appeal via Form 13711 within 30 days of the date of the rejection notice. If accepted, the appeal will give the taxpayer the opportunity to renegotiate their rejected offer under more favorable terms for the IRS.

To win an appeal, it is necessary to justify your client’s position by referencing documentation and tying it together with the IRM, IRC, and court decisions correctly. If you’ve already exhausted IRM and IRC references, try using case law.

While it can be effective to emphasize on the emotional side of your client’s situation, this should not be the core of the argument - rather, the “cherry on top.” During my time at the IRS, I never lost an appeal hearing because I rooted my arguments in the IRM and IRC, and you can expect other IRS officers to do the same.

What if your client’s request is rejected?

Look into other options - there are a number of them! As with the OIC, each of these options have requirements so depending on your client's situation, one may be a good fit.

Installment Agreements are a great option for taxpayers who can't pay what they owe immediately. Taxpayers who owe \$50,000 or less will have 72 months to repay debt, or they can waive the statute of limitations if it cuts their repayment short. Taxpayers who owe \$50,000 to \$100,000 have 84 months to pay off their debt.

A **Payment Extension** can also be an option if your client simply needs additional time to pay off their debt. IRS can grant a 120-day extension. However, if the taxpayer's account is already being handled by IRS Collections, that extension can only be 60 days.

"Currently Not Collectable" (CNC) Status can be awarded to taxpayers who owe back taxes to the IRS but cannot pay. This can also be for taxpayers who the IRS cannot locate or who have died with no heirs. However, once this status is given, all collection will halt until further notice. In order to qualify, the person needs to prove significant hardship.

Tax Resolution software can make these situations a lot easier to understand, but if you don't have that option, following these top-line tips will help your clients submit a strong OIC.