



New York State
Department of
Taxation and Finance

Publication 220

Offer in Compromise Program

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The New York State Offer in Compromise Program allows qualifying, financially distressed taxpayers the opportunity to put overwhelming tax liabilities behind them by paying a reasonable amount in compromise. The Tax Department will not necessarily, however, accept every *offer in compromise* (also referred to as *offer* throughout this publication).

The Commissioner of Taxation and Finance is empowered to compromise taxes for qualifying taxpayers under Tax Law sections 171.15th, for liabilities considered fixed and final; 171.18th-a, for liabilities still subject to administrative review; and 171.18th-d, for certain joint personal income tax liabilities. Under section 171.15th, if the tax portion of the liability is more than \$100,000 (not including penalties and interest), compromises must be approved by a New York State Supreme Court justice. Other standards set forth in the Tax Law, and requirements in Parts 5000 and 5005 of the New York State Official Compilation of Codes, Rules, and Regulations (NYCRR), are described below.

In most cases, to be eligible for an offer in compromise, taxpayers must be insolvent (liabilities exceed assets), **and** the Tax Department's ability to collect more than the amount offered must be in doubt. In addition, taxpayers making an offer must have filed all applicable New York State tax returns.

The taxpayer should make a reasonable monetary offer based on his or her financial situation. If an offer is withdrawn or rejected, any money sent in by the taxpayer with the offer in compromise will be promptly refunded **without interest** or, at the taxpayer's request, applied to the tax liability. In addition, collection activities may continue while an offer is under review.

Insolvency

A taxpayer is considered insolvent when the taxpayer's liabilities, including tax liabilities, exceed the fair market value of his or her assets. The taxpayer must conclusively demonstrate this insolvency.

Collectibility

The department, after an evaluation, determines an amount that it realistically expects could be collected within a reasonable period of time from the taxpayer's assets. The amount acceptable in compromise cannot be less than what could be expected to be collected from the taxpayer over that period through legal proceedings, such as levies, income executions, and seizures.

Offer in compromise forms

Form DTF-4, *Offer in Compromise (For Liabilities Not Fixed and Final and Subject to Administrative Review)*, or DTF-4.1, *Offer in Compromise (For Fixed and Final Liability)*, must be filed to request an offer in compromise.

A completed Form DTF-5, *Statement of Financial Condition and Other Information*, must be submitted with the last three years of federal income tax returns, a credit report less than 30 days old, the last 12 months of bank statements, and Form DTF-4 or DTF-4.1 to:

**NYS TAX DEPARTMENT
OIC PROGRAM
PO BOX 5100
ALBANY NY 12205-0100**

Offers in compromise when the liabilities are considered fixed and final (Tax Law section 171.15th)

Offers under this subdivision apply to tax liabilities for which further administrative or judicial review is not available. Therefore, the primary consideration is collectibility. An offer would be considered if the taxpayer has been discharged from bankruptcy within the last year or is shown to be insolvent. The amount accepted cannot be less than what could realistically be expected to be collected from the taxpayer through legal proceedings.

Offers in compromise when the liabilities are still subject to administrative review (Tax Law section 171.18th-a)

Offers under this subdivision apply to tax liabilities that are still subject to administrative review, and are not fixed and final. The offer may be based on doubt as to the taxpayer's liability for the taxes due, or doubt as to the taxpayer's ability to pay the taxes due, in full, over a reasonable period.

Trust tax liabilities

For trust tax liabilities (e.g., withholding tax, sales tax), an amount less than the tax amount owed, exclusive of penalties and interest, will not normally be accepted. However, upon evaluation of the facts of the specific case, the department may determine that a lesser amount is acceptable if it is in the best interest of all parties concerned. The department considers whether the business is still in operation, and whether the trust taxes were actually collected.

Joint income tax liabilities

For joint income tax liabilities, the taxpayers may file an offer jointly on one Form DTF-4 or DTF-4.1, or may each file a separate offer. If only one taxpayer's offer is accepted and paid, the remaining taxpayer continues to be liable for the outstanding balance of the liability. An accepted offer forgives further payment **only** for the taxpayer whose offer was accepted.

Responsible person

A taxpayer assessed as a responsible person liable for the collection and payment of trust taxes for a business may compromise his or her trust tax liability separately from the business. Any or all of the responsible persons may apply for an individual offer in compromise. The department will make a separate determination on each offer, based on the circumstances of each responsible person who applies. If the offer is accepted, the payments made toward the offer will reduce the business's liability by that same amount. While the taxpayer's responsible person assessments are abated upon full payment of the accepted offer, the business's assessments and the assessments of any other responsible person will remain open and collectible, less all payments made under the offer.

If a business applies for an offer in compromise and the responsible persons do not apply individually, acceptance of the business's offer would have no effect on a responsible person's liability other than reducing his or her individual liability by an amount equal to that paid by the business.

Offers in compromise when the liabilities concern certain joint personal income tax liabilities (Tax Law section 171.18th-d)

To qualify for an offer under this subdivision, a taxpayer must have a liability on a previously filed joint income tax return and, at the time of the offer, the taxpayer and his or her spouse must be separated under a decree of divorce or separate maintenance or a written separation agreement, or a judicial decree of separation, or living apart and not considered married under section 7703(b) of the Internal Revenue Code. It must also be determined that the collection of the spouse's share of the liability from the taxpayer cannot be accomplished within a reasonable period without imposing substantial economic hardship on the taxpayer.

Offer in compromise withdrawal

The taxpayer or the taxpayer's representative may withdraw an offer before an official review has been completed and before a final decision has been made on the offer. In some cases, such as when a taxpayer fails to supply requested information, the department considers the offer to be withdrawn as incomplete and advises the taxpayer in writing of the decision.

Offer in compromise acceptance

Upon acceptance of an offer, written notification will be provided to the taxpayer or the taxpayer's designated representative specifying the terms and conditions. Under the terms of the accepted offer, the taxpayer agrees to remain fully compliant with all Tax Law requirements, including filing returns and paying tax when required for the next five years. Any state tax refunds payable to the taxpayer for periods prior to and including the calendar year in which the offer is accepted will be applied to the original outstanding liability. Any excess will be refunded to the taxpayer.

The taxpayer(s) waive(s) any statute of limitations defenses to the assessment and collection of the liability sought to be compromised and further waives(s) any statute of limitations defenses against the issuance of new assessment(s) for the compromised liability in the event the taxpayer(s) fail(s) to comply with the terms of the Offer in Compromise.

The taxpayer also agrees to forfeit any current capital loss or net operating loss credits taken on any future New York State tax returns.

Offer in compromise rejection

Written notification is provided if an offer is rejected. Examples of reasons for rejection include, but are not limited to:

- The taxpayer does not meet the statutory requirements set forth in the New York State Tax Law.
- The taxpayer submits false or misleading information.
- The taxpayer submits a frivolous offer.
- The taxpayer fails to make full financial disclosure.
- There is evidence that assets were transferred for less than the fair market value.
- The taxpayer shows a lack of a good faith effort to repay the liability.
- The tax liability sought to be compromised directly relates to a crime for which the taxpayer has pleaded or been found guilty.

Depending on the circumstances, the department may reconsider a rejected offer if there is a material change in the taxpayer's circumstances, if the department misinterpreted information contained in the original offer, or if the taxpayer offers a substantial increase in the amount that was originally offered.

Defaulted offers

If a taxpayer fails to abide by all of the terms and conditions of the offer in compromise, the offer is in default. Upon default and revocation, the original liability is reinstated, including all appropriate penalty and interest, minus any payments received on the offer.

Offers made to the Internal Revenue Service

The New York State Offer in Compromise Program is distinct from similar programs offered by the federal government. For example, the guidelines for the acceptance of offers differ. However, the department will accept a copy of the federal offer in compromise collection information statement as part of the application process.

If you have questions about the New York State Offer in Compromise Program, please call (518) 457-9086 from 8:00 a.m. to 4:25 p.m. (eastern time), Monday through Friday. For forms and other information, see *Need help?* below.

Need help?



Internet access: www.nystax.gov

Access our Answer Center for answers to frequently asked questions; check your refund status; check your estimated tax account; download forms, publications; get tax updates and other information.



Fax-on-demand forms: Forms are available 24 hours a day, 7 days a week.

1 800 748-3676



Telephone assistance is available from 8:00 A.M. to 5:00 P.M. (eastern time), Monday through Friday.

Refund status: 1 800 443-3200
(Automated service for refund status is available 24 hours a day, 7 days a week.)

To order forms and publications: 1 800 462-8100

Personal Income Tax Information Center: 1 800 225-5829

From areas outside the U.S. and outside Canada: (518) 485-6800

Text Telephone (TTY) Hotline (for persons with hearing and speech disabilities using a TTY): 1 800 634-2110



Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call 1 800 225-5829.