



CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION

TAX POLICY BUREAU

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GAVIN NEWSOM
Governor

NICOLAS MADUROS
Director

March 20, 2020

VIA INTERNET

Dear Interested Party:

The Compliance Policy and Procedures Manual (CPPM) is a guide for the California Department of Tax and Fee Administration (CDTFA) staff in administering tax and fee programs. It is available to the public and can be accessed from the CDTFA web page at <http://www.cdtfa.ca.gov/taxes-and-fees/staxmanuals.htm>.

The Business Tax and Fee Division is proposing a revision to CPPM Chapter 7, *Collections*, to incorporate the current policy regarding the Offer in Compromise Program.

The revision material is provided on the following pages for the convenience of interested parties who may wish to submit comments or suggestions. Please feel free to publish this information on your website or otherwise distribute it to your association/members.

If you have any comments or suggestions related to the proposed CPPM revisions, you may contact the CDTFA at CPPMRev@cdtfa.ca.gov. Your comments or suggestions must be received by the CDTFA no later than **April 20, 2020**, in order to be considered by staff. Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink that reads "Trista Gonzalez".

Trista Gonzalez, Chief
Tax Policy Bureau
Business Tax and Fee Division

[Staff Note – Additions to the text are in bold font. Deletions are shown with strikethrough.]

OFFERS IN COMPROMISE

772.000

GENERAL

772.010

The Offer in Compromise (OIC) program is available to all taxpayers that do not have the income, assets, or means to pay their liability within a reasonable period of time, in most cases within 5 to 7 years. Generally, if an OIC is accepted, the taxpayer’s liability is eliminated and liens are released.

In order to participate in the OIC program, taxpayers must meet the following requirements:

1. The account is closed (not active) and the liability is final.
2. The taxpayer is not disputing the liability.
3. The person making the offer is not involved or associated with the same, or similar, type of business.
4. The liability is assessed by the California Department of Tax and Fee Administration (CDTFA), is final, and there is no evidence of tax reimbursement.

Effective January 1, 2009, through January 1, 2023, the OIC program will extend to qualified active businesses where the taxpayer has not received reimbursement for the taxes, fees, or surcharges owed to the state, to successors of businesses that may have inherited tax liabilities of their predecessors, and to consumers who incurred a use tax liability.

To assist taxpayers in determining if they are eligible for an OIC and an appropriate offer amount, a new Offer in Compromise Pre-Qualifier web-based tool is available on the CDTFA website. The tool is intended for use by individuals and not by corporations or limited liability companies. Taxpayers should be encouraged to use the tool before submitting their OIC application to ensure they qualify and are making a reasonable offer. Taxpayers who pass the initial vetting questions process are asked to provide additional financial information. Once the information is added, the tool calculates a proposed offer based on the amount of the tax/fee debt, equity in assets, and monthly income. If the taxpayer decides to continue and apply for an OIC, they can click the link to the CDTFA-490, *Offer in Compromise Application*, within the tool’s webpage. A hardcopy of the application must be submitted to the CDTFA. While the tool may inform a taxpayer they appear to qualify for the OIC program, the OIC Section is responsible for reviewing the application and supporting documentation to determine whether the taxpayer’s OIC request is approved.

~~If after reviewing an account,~~ **If the taxpayer is not able to use the OIC Pre-Qualifier tool and** it appears the taxpayer is a good candidate for the OIC program, the responsible collector may invite them to participate by sending a CDTFA-908, *Offers in Compromise Program*, and/or an OIC application (CDTFA-490 or CDTFA-490-C). ~~The CDTFA 908 is available in ACMS through the Actions menu under Send Correspondence, and through the Send Letter fast path button at the account level.~~

FRAUD

772.020

An OIC will **not** be considered in situations where the taxpayer has been convicted of criminal (felony) fraud. However, taxpayers who have been assessed a civil fraud penalty

may participate in the OIC program. In these cases, the CDTFA requires a **minimum** offer of the tax plus the fraud penalty. The minimum offer requirement may be waived if it can be shown that the taxpayer making the offer was not the person responsible for perpetrating the fraud. Usually, this situation occurs in partnership accounts where the intent to commit fraud can be clearly attributed to another partner.

PROCESSING AN OFFER IN COMPROMISE PROPOSAL

772.030

All OIC proposals must be filed with the OIC Section using a CDTFA-490, *Offer in Compromise Application* (for individuals, sole proprietors, married couples and domestic partners), or CDTFA-490-C, *Offer in Compromise Application for Corporations, LLCs, Partnerships, etc.*

Individuals that have multiple tax liabilities with the CDTFA, Franchise Tax Board (FTB), or Employment Development Department (EDD) may use the *Multi-Agency Application* (DE-999CA). All three application forms are available to CDTFA staff and the public via the CDTFA's website at www.cdtfa.ca.gov.

The taxpayer is required to complete and sign the application and provide all the required supporting documentation (see Check List of Required Items on page 2 of the OIC application). ~~The OIC package should be submitted to the office responsible for the account.~~

~~The responsible office will examine the OIC package, ask the taxpayer to provide any missing information, and prepare a memorandum summarizing the account (instructions for completing the memorandum are detailed below, see bullet point 3). The responsible office may not reject, deny, or negotiate an OIC based on its review of the application and will forward all OIC requests to the OIC Section within 30 days from receipt, regardless of the documentation provided to that point.~~

~~If there is a payment plan already in place, the responsible office should advise the taxpayer to continue remitting its payments as promised., The OIC Section will notify the taxpayer to terminate the payment plan when appropriate. The responsible office must monitor scheduled payments and follow up manually once ACMS routes the account to the OIC Section. Existing Earnings Withholding Order (EWO) payments and offsets from other state agencies will also continue, while the OIC Section is reviewing the OIC. In most cases, collection actions will be suspended if there is no existing payment plan or EWO. Contact the OIC Section prior to taking any *new* collection action, or if delaying collection action will jeopardize the CDTFA's ability to collect.~~

OIC packages are either submitted to the office responsible for the account or directly to the OIC Section. When the OIC package is submitted to the responsible office, the collector shall scan and upload the OIC package into the system within three business days of receipt. The collector will send an email to the OIC lead and OIC support team member informing them an OIC package has been uploaded in the system. The collector will forward the original package to the OIC Section (MIC 52) via inter-office mail.

If there is a payment plan already in place, the OIC Section will advise the taxpayer to continue remitting their payments as promised, or inform them the payment plan is being terminated. While the OIC is under review, existing Earnings Withholding Order for Taxes (EWOT) payments and offsets from other state agencies will continue. When accounts are under the OIC review, collectors may continue to monitor existing payment plans and collections, but should not invoke any new collection actions. If delaying any collection actions will jeopardize the CDTFA's ability to collect, the collector must contact the OIC Section *prior* to

taking any new collection actions.

Some OIC proposals may involve partnership accounts. If only one partner has requested an OIC, the responsible office should suspend collection actions only for the partner requesting the OIC.

~~Forward the following information to the OIC Section within 30 days:~~

- ~~1. The completed application (CDTFA-490, CDTFA-490-C, or DE-999CA) which must indicate an offered amount and include the taxpayer's signature.~~
- ~~2. All of the supporting documentation provided by the taxpayer.~~
- ~~3. A memorandum summarizing the account status for each of the following points (please indicate "not applicable" or "not available" if the points do not apply):~~
 - ~~a. How was the liability assessed? If the liability resulted from a tax determination, what were the audit findings based upon? Was a fraud penalty involved?~~
 - ~~b. How old is the liability? What collection actions have been taken and what were the results? Has the account been written off? Does the taxpayer have a related active business, or is the taxpayer involved in a similar business? Please include a detailed history that answers these questions.~~
 - ~~c. What is the source of the funds being offered? Is the taxpayer taking out a loan, borrowing from a family member, etc.?~~
 - ~~d. What is the present financial condition of the taxpayer and the possibility of his or her financial condition improving in the future? For example, future employment opportunities, inheritance, judgments, etc. If the taxpayer is currently on a payment plan, what is the payment amount and what is the due date? If there is an EWO in place, what is the amount the CDTFA is receiving from the employer, and how often? Does the taxpayer have any beneficial use of property in California?~~
 - ~~e. Is the taxpayer still involved with the business that generated the liability? Did the taxpayer incorporate? Was property transferred to a spouse or a relative? Will a nominee lien be issued?~~
 - ~~f. Is the taxpayer located inside or outside of the state? If located outside of the state, is the CDTFA receiving voluntary payments? If so, how much and what is the due date of the payment(s)?~~
 - ~~g. What is the taxpayer's age, physical condition, and earning ability? Are there any special circumstances that may affect the taxpayer's financial situation over the next several years? Is the taxpayer eligible for retirement, social security, unemployment, or disability benefits? Does the taxpayer have any medical conditions or health problems? Does the taxpayer have any special skills or expertise? Provide any other information that could affect the taxpayer's finances and include their spouse, dependents, or other relatives, if appropriate.~~
 - ~~h. If a corporation requests an OIC, will a RTC section 6829 dual determination for personal liability of corporate officer(s), be issued? Is there a possibility of issuing a corporate suspension dual determination?~~
 - ~~i. Did the taxpayer file bankruptcy? If so, what was the result of the CDTFA's claim? Did the taxpayer receive a discharge? Please include the chapter filed, petition date, case number, discharge or dismissal date, and the date of closing. In cases where there are multiple bankruptcy petitions, please provide information for each petition.~~

- j. ~~Was a security deposit or personal guarantee posted to the account? Provide the date, amount, and type of security posted. Was the security liquidated and applied to the account? Provide the date and amount applied. NOTE: All security posted to the account, whether a bond, personal guarantee, or a Time Certificate of Deposit, must be liquidated and applied to the balance before an OIC will be considered. A surety bond is a viable asset upon which the CDTFA can and should make a claim as soon as it has been determined no other collection remedies exist. A demand will be placed on a surety bond prior to accepting an OIC.~~

OFFER IN COMPROMISE SECTION — PROCESSING APPLICATIONS 772.040

In accordance with CDTFA policy, all OIC applications sent to the OIC Section are acknowledged in writing, within 12 working days of receipt. The taxpayer receives an acknowledgement letter along with a copy of the CDTFA-324-OIC, *Privacy Notice*. The OIC Section inputs ~~comments~~ **notes** in the system after the acknowledgement letter and privacy notice is mailed.

The OIC Section assumes control of the account while the offer is under consideration, unless there are partners who are not involved in the offer.

SECURING THE OFFERED AMOUNT 772.050

The taxpayer is not required to post the offered amount at the time the application is submitted. The OIC Section will notify the taxpayer when it is appropriate to fund the offer. ~~However, if funds are received in a field office, they should be processed as an “OIC deposit” (see CPPM 772.090 for detailed instructions.)~~ **However, funds received in a field office should be processed with an OIC payment voucher. If the offered funds are provided by a person not associated with the business entity (e.g., relatives, friends), notes identifying the person making the deposit must be entered into the system.**

~~In many instances, the offered funds are provided by relatives or friends not associated with the business entity. These deposits are processed as third party deposits in accordance with CPPM 772.090.~~

If an OIC is not accepted, the deposited funds are either applied to the liability or returned to the taxpayer, based on the written direction of the taxpayer. If a third party posted the deposit, the written direction of the third party is needed. When the CDTFA retains an OIC deposit, it is applied to the taxpayer’s liability using the date the funds were received as the effective date of payment.

PROCESSING ACCEPTED OFFERS 772.060

The OIC Section will evaluate all OIC requests to determine if they are consistent with statutory requirements and CDTFA policy. If the offer is formally accepted, the OIC Section will initiate the approval process.

~~Upon approval of the accepted offer, the OIC Section will apply the offered funds, adjust balances, release liens, remove offsets, and input IRIS/ACMS comments. The OIC Section will send the taxpayer an acceptance letter indicating the periods of liability that have been compromised, along with copies of lien release documents and a statement of balance. In addition, a public records notice may be issued if the compromise exceeds \$500.~~

Upon approval of the accepted offer, the OIC Section will apply the offered funds, adjust balances, release liens, remove offsets, and enter notes in the system. The OIC Section will send the taxpayer an acceptance letter indicating the periods of

liability that have been compromised. The release of lien documents will be auto-generated and mailed separately to the taxpayer. In addition, a public records notice will be issued if the compromise exceeds \$500. If there is an offset or Earnings Withholding Order for Taxes (EWOT) in place, the OIC Section will release any offsets, and notify the employer, as applicable.

If the compromise involves a partnership, the partner making the **OIC** offer is relieved from debt upon acceptance of the offer. Any partner that was not included in the OIC request is responsible for the remaining balance due after the offered funds are applied to the liability. ~~The OIC Section will create an arbitrary account with account prefix "96" by selecting "RUPA Arb" on the "Type of Arbitrary" pop up screen when creating the account. This allows the partner who has submitted an approved offer to receive a paid-in-full statement without affecting the primary account. OIC staff will enter the No Mail (NM) indicator on the Maintain Partnership screen so the partner will not receive copies of statements mailed to the partnership after the partner's OIC is accepted. OIC staff will make comments in IRIS/ ACMS to indicate that a partner's offer has been accepted and will remove that partner from account records. OIC staff will send a request to the CDTFPA ACMS email group to delete from the primary (partnership) account, the name of the person whose OIC was accepted. However, that partner's name will remain in account history and comments.~~ **The OIC Section shall enter the appropriate notes in the system to confirm the partner's approval and unlink the approved partner from the liability's balance. The approved partner shall remain in account history and notes.**

PROCESSING REJECTED, DENIED, OR WITHDRAWN OFFERS

772.070

~~If an offer is not acceptable, the OIC section notifies the taxpayer in writing of the rejection, denial or withdrawal and provides an explanation for the decision. The OIC Section also adds comments in the system and routes the account back to the responsible office to proceed with collection action.~~

~~If the taxpayer posted the offered amount, the funds are applied to the account or returned, depending on the taxpayer's written instructions. Credit interest will not be granted on OIC deposits returned to the taxpayer. In addition, a refund will not be issued if the source of the deposited funds is an equity loan where a lien subordination or partial release of lien was issued by the CDTFPA to accommodate the taxpayer. In these cases, lien subordinations and partial release of liens will be approved by the OIC Section Supervisor.~~

~~The office that posted the offered amount from the taxpayer is responsible for issuing a refund. If the funds were submitted to the OIC Section and deposited through the Cashier, the Audit Determination and Refund Section will issue the refund. The OIC Section will send a request to the appropriate office and initiate the refund process.~~

If an offer is not acceptable, the OIC Section notifies the taxpayer in writing of the rejection, denial or withdrawal and provides an explanation for the decision. The OIC Section is responsible for closing the case in the system and entering the appropriate notes. Upon closure, the OIC indicator is removed. If the taxpayer posted the offered amount, the deposited funds either remain applied to the liability or are returned to the taxpayer, based on the written direction of the taxpayer. When a third party posts the deposit and a refund is requested, the refund will be sent directly to the third party. The OIC Section is responsible for initiating the refund request.

APPEALS

772.080

A denied or rejected Offer is not subject to administrative appeal or judicial review.

**PROCESSING OFFER IN COMPROMISE FUNDS
RECEIVED IN A FIELD OFFICE**

772.090

~~Funds received as deposits pending acceptance of an OIC will continue to be processed as 2B Deposits. As such, the field office Security Tax Technician will post them to the Security Deposits system in the Security Posting (SEC PO) screen. The CDTFA 487, with the words "Offer in Compromise Deposit" hand-written at the top will then be submitted to the field office cashier for processing. The cashier will process the deposit in the same manner as regular security, using the Entity's TIN and the S/D switch. Cashiers must add comments indicating that this is a 2B deposit pursuant to a pending compromise offer.~~

~~As an added requirement, if a third party is posting the deposit on behalf of the taxpayer, the Security Tax Technician must so reflect it in the SEC PO screen and provide the PAYOR's TIN to the cashier. The cashier will enter the TIN in CSH RO on the PAYOR TIN field. This will serve to specifically identify the person making the deposit. The deposit will still be processed using the Entity's TIN and the S/D switch as previously instructed.~~

Disbursing & Applying Offer In Compromise Funds Upon Acceptance of an Offer in Compromise

~~When the OIC Section notifies the responsible office of the acceptance of an OIC, the Security Tax Technician will initiate the disbursement of the 2B deposit based on current procedures. *However, a separate check for the exact amount of the deposit must be issued.* Payment application information and effective date must be furnished to the cashier by the Security Tax Technician. The payment document furnished to the cashier, which in most cases will be a DIF DA screen print, must have the words "Offer in Compromise Payment" hand-written at the top. The effective date of payment should be the date the funds were presented for deposit.~~

~~If the OIC involves a partnership and the partner making the offer is relieved of the debt, the payment should be applied to the RUPA arbitrary account issued for the partner. Payments applied to the RUPA arbitrary account will appear as an adjustment on the primary account.~~

~~OIC funds are not to be processed in the same manner as cashed out security. Upon presentation of the disbursement check by the Security Tax Technician, the cashier will process these remittances by entering CHK in the Remit Type and *will not* enter CSD in the Special Remit field in CSH RO. The cashier will process the remittance using the payment application information and the effective date provided by the Security Tax Technician. The cashier must add comments to indicate that this was a payment from a 2B deposit pursuant to an accepted OIC. The Security Tax Technician must notify the OIC Section that the funds have been applied via telephone at (916) 322-7931 or fax at (916) 322-7940.~~

~~Refunds of any OIC deposits must be made promptly after receiving directions to that effect from the OIC Section. The Security Tax Technician must add comments detailing the reason for the refund.~~