

OFFERS IN COMPROMISE

772.000

GENERAL

772.010

An Offer in Compromise (OIC) is a proposal made by the taxpayer to the Board to pay less than the amount due to settle liabilities that they cannot pay in full. In order to participate in the Board's Offer in Compromise Program, the following conditions must be satisfied:

The liability to compromise must be a final liability and not in dispute.

The tax or fee account must be closed and the taxpayer must not be involved in the operation of the same business or same type of business that generated the tax or fee liability that is proposed to be compromised.

The taxpayer does not have the means to pay the liability in full within a reasonable period of time, in most cases between five and seven years.

As of January 1, 2003, the BOE has statutory authority to accept an OIC for Sales and Use Tax, Section 7093.6, for Use Fuel Tax Section 9278, and for the Underground Storage Tank Fee, Section 50156.18 of the Revenue and Taxation Code. Offers will be accepted when it can be clearly shown that accepting the offer is in the best interest of the state. To make this determination, an evaluation is made on the taxpayer's ability to pay (consideration is given for the potential for change in financial circumstances).

For all other tax and fee programs, the Board does not currently have the statutory authority to accept an OIC. To accomplish an OIC in these situations, a complaint must be filed with the Superior Court for the total amount due. To resolve the complaint, a Stipulated Judgment is filed in which both parties, the taxpayer and the Board, agree that the offered amount will fully satisfy the liability. There is a court processing fee and the amount of the fee changes periodically.

FRAUD

772.020

Offers for liabilities with a fraud penalty will require a minimum offer of the tax and fraud penalty. The minimum offer can be waived if it can be shown that the taxpayer making the offer was not the person responsible for perpetrating the fraud. This situation applies to partnership accounts where the intent to commit fraud can be clearly attributed to another partner.

Offers will not be entertained in situations where the taxpayer has been convicted of criminal fraud for fraudulent behavior during the audit period.

PROCESSING OF OFFERS

772.030

For processing, all OIC proposals must be filed on Form BOE-490, *Offer in Compromise Application*, or BOE-490-C, *Offer in Compromise Application for Corporations, Limited Liability Companies, Partnerships, Trusts, and Unidentified Business Organizations*, and forwarded to the OIC Section for evaluation. The applications may be downloaded via the Internet at <http://www.boe.ca.gov/sutax/staxforms.htm>

The taxpayer is required to complete and sign the application. Supporting documentation must be provided to enable the Board to evaluate the merits of the offer. The taxpayer should mail the completed application to the office of control that administers the account (Office). The taxpayer's signature must be on the application when received by the Board.

PROCESSING OF OFFERS

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The Office should review the application and request any additional information required (as outlined on page 2 of the BOE-490) within **30 days**. The Office should strive to gather all the supporting documentation necessary for the OIC to be evaluated, and prepare a summary of the account status as outlined in number 3 below. OIC applications, supporting documentation and the summary should be forwarded to the OIC Section within **30 days** after the offer is received in the Office, whether or not the package is complete.

The taxpayer will need to continue making periodic payments as agreed upon in any existing installment payment agreement. Earnings Withholding Orders (EWO) will also continue while the OIC Section is reviewing the offer. The OIC Section will monitor the payments and inform the taxpayer when he/she can terminate the agreement if appropriate. In most cases, if there is no existing installment payment agreement or EWO, collection action should be suspended. Offsets from other state agencies will continue during the OIC process.

Some OIC proposals may involve a partnership. If only one partner has requested an OIC, the Office should suspend summary collection action for the partner who has requested the OIC. The name of the requesting partner should be removed from all summary collections other than offset.

If delaying collection activity jeopardizes the Board's ability to collect the tax, the Office may proceed with collection efforts after notifying the OIC Section of their intentions to pursue collection.

The Office is required to forward all offers and is not authorized to reject an offer based on its review. Referral of an OIC to the Headquarters' Offers in Compromise Section **should** include:

1. The completed Form BOE-490 or BOE-490-C, which must indicate an offered amount and include the taxpayer's signature.
2. Documentation supporting the offer, which is outlined on the second page of the Form BOE-490 or BOE-490-C.
3. A memo summarizing the account status for each of the following points below (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 which includes answers to these questions.
 - (c) What is the source of the funds offered in compromise? Is the taxpayer taking out a loan, borrowing from a family member, etc.?

PROCESSING OF OFFERS

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- (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 an installment payment agreement, what is the payment amount and what is the due date? If there is an Earnings Withholding Order in place, what is the amount the Board 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 he incorporate? Did he transfer the property to a spouse or relative and is still involved with the operation of the business?
- (f) Is the taxpayer located inside or outside of the state? If the taxpayer is located outside of the state, is the Board receiving voluntary payments? If so, how much and what is the due date of the payment?
- (g) What is the taxpayer's age, physical condition, and earning ability?
- (h) If the offer is from a corporation, has a dual determination under Revenue and Taxation Code Section 6829, *Personal liability of corporate officer*, been explored? Is there a possibility of a corporate suspension dual determination? Are there any personal guarantees?
- (i) Did the taxpayer file bankruptcy? If so, what was the result of our 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.

PROCESSING OF OIC APPLICATIONS BY THE OIC SECTION

772.040

The OIC Section will send a written acknowledgement of all Offer in Compromise applications to the taxpayer within 12 working days of receipt in the OIC Section. The Office will receive a copy of the acknowledgement letter and other correspondence that indicates the status of an offer. The OIC Section will assume control of the account in the Automated Compliance Management System (ACMS) while the offer is under consideration, unless there are partners not involved in the offer. If the account has been transferred to the OIC Section through ACMS, the Office should have submitted adequate documentation of the due date of payments. If a payment is delinquent, the account may be referred back to the Office if collection action is warranted. The average length of time to process an offer and make a recommendation is approximately 180 days from receipt of an OIC application package, when all of the supporting documentation is in the OIC Section.

SECURING THE OFFERED AMOUNT

772.050

The taxpayer is not required to submit a deposit of the offered amount at the time the application is submitted. The OIC Section will notify the taxpayer when the funds should be submitted. However, if funds are received with the application, they should be processed as an "OIC deposit" (Refer to CHRD Bulletin #53). The Office will continue to accept, apply, and refund "OIC deposits." In many instances, funds for the offered amount are provided by relatives or friends not associated with the business entity. These deposits should be processed as third-party deposits. The deposit of the offered amount in most cases will be available for refund if the offer is denied. The deposit will not be refunded if the payment comes from an equity loan where a lien subordination or partial release of lien was issued by the Board to accommodate the taxpayer. In these cases, lien subordinations and partial release of liens will be approved by the OIC Section Supervisor.

PROCESSING ACCEPTED OFFERS

772.060

All funds must be received prior to forwarding a recommendation to management for approval to accept the offer. Recommendations to accept offers are forwarded to the Chief, Taxpayers' Rights and Equal Employment Opportunity Division, and then to the Legal Division for review.

For Sales and Use Tax, Fuel Tax, and Underground Storage Tank Maintenance Fee programs, if the compromised liability results in the reduction of:

- \$7,500 or less in tax or fees
The Executive Director and Chief Counsel have the combined authority to approve the compromise
- Over \$7,500 in tax or fees
The Board Members have the authority to approve the compromise

For all other tax and fee programs, if the offer amount is:

- \$5,000 or more in tax or fees
The OIC Section refers the case to the Attorney General's Office for processing
The Attorney General's Office will request court processing fees from the taxpayer
- Under \$5,000 in tax or fees
The OIC Section will process the legal paperwork through Superior Court and request court filing fees from the taxpayer
The court filing fees should be posted as an "OIC Deposit" to be later applied as collection costs

Once the OIC is approved, adjustments will be made to the taxpayer's accounts receivable and liens will be released. For partnership or husband and wife co-ownership accounts where only one party has their offer accepted, a single party release of lien will be issued.

For sales and use tax accounts, the OIC Section will make a comment on the Taxable Activity Registration (TAR) System and ACMS to indicate when a partner's offer has been accepted. The OIC Section will also initiate the process to remove the claimant from the active account record as of a specific end date. The taxpayer name will be retained in account history and comments. The Office should make adjustments when taking collection action by removing the relieved taxpayer's name from FTB offsets, lien requests, levies, warrants, and any other collection remedies that would adversely affect the relieved partner.

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PROCESSING REJECTED, DENIED, OR WITHDRAWN OFFERS

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If the offer is rejected, denied, or withdrawn, the taxpayer will receive a letter with a copy to the Office. Any deposit that was posted may be applied to the liability **at the written request of the taxpayer**. The effective date of the payment will be the date the funds were received. If a third party has posted the deposit, the OIC staff must get written permission from the third party to apply the deposit. No credit interest will be granted on returned deposits.

In some cases, the OIC Section makes a recommendation to the Office for account resolution, typically, a payment arrangement. The recommendation is based on information pertaining to the taxpayer's financial status. To finalize the arrangement, the Office must obtain a completed Form BOE-407 from the taxpayer. The OIC Section notifies the taxpayer that the Office may re-evaluate the payment agreement in six months.

APPEALS

772.080

There is no formal appeal process for offers in compromise that have been rejected or denied. However, the taxpayer may informally appeal a denied offer in compromise with the OIC Section Supervisor and the Taxpayers' Rights Advocate.