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## 4 Tips To Cash In On IRS Debt Settlement Momentum

By **Ama Sarfo**

Law360, New York (April 30, 2014, 3:30 PM ET) -- Recent data from the Internal Revenue Service shows that seductive TV commercials promising to settle tax debts for pennies on the dollar may hold more truth than at first glance, as acceptance of offer-in-compromise applications has skyrocketed 95 percent since 2009.

The IRS' offer in compromise programs uses a formula to resolve taxpayers' debts and considers assets, income and expenses, among other factors. It has never been easy to secure an OIC, but the agency has been rubber-stamping an increasing number of applications in recent years.

The increase is due, in part, to a 2012 change that requires the IRS to consider one or two years of a taxpayer's future earnings potential instead of four or five. In 2013, the IRS accepted 41.8 percent of its OIC applications, a nearly 12 percent increase from its 2012 acceptance rates, according to agency data.

"The IRS has recognized the effects of the recession, and they see that people are hurting," said William Lewis, a tax attorney with Lewis & Associates.

Here are four tips attorneys say are useful for securing an offer in compromise for a client:

### **Weigh the Pros and Cons of Your Payment Options**

The IRS allows OIC participants to pay their offer in a lump sum or in periodic payments — a choice attorneys say is crucial, as one misstep in the payment process can void an OIC deal.

OIC applicants choose their payment option before they submit their application to the IRS. Taxpayers who want to pay their debt in a lump sum must submit 20 percent of their proposed offer with their application and, if accepted, pay the offer within five months. Applicants who want to pay in installments over two years must calculate their monthly payments, submit the first payment with their application and continue to pay the installments while the IRS considers their offer.

Experts resoundingly say that tax attorneys should steer their clients toward the lump sum option, as it allows clients to quickly put their debts behind them and happens to be the option that the agency prefers.

"The IRS makes monthly payments for the OIC program rather difficult," said Heather Gosnick, a consulting attorney for Clean Slate Tax. "Twenty-four months is hard — you never know what will happen. And if you're a day late, your offer is automatically rejected,

and the late payment undoes the entire offer.”

That said, the 20 percent initial deposit and expedited payment period may be unattainable for some OIC applicants — particularly those who make too much to qualify for a low-income exemption for the deposit.

John Cocklereece, a Bell Davis Pitt attorney, says it's up to lawyers to encourage their clients to come up with the cash.

“I tell my clients that if they have \$100,000 in tax debt and can pay it off for \$5,000 under the program, they'll do whatever they can do to come up with the money because that's the best deal they're going to get,” he said.

### **Share Everything**

The IRS has a straightforward list of financial documents and information that taxpayers must submit in the OIC application process — proof of rent or mortgage payments, investments, bank statements, real estate, vehicles, and other assets and sources of income necessary to give the agency a complete picture of a taxpayer's financial situation. This part of the application may prove most difficult for clients who don't hold onto their documents, but attorneys say there are ways to help clients obtain proper documentation.

Gosnick says she often uses notarized statements, and Ronson Shamoun of RJS Law Firm urges clients to get in touch with their banks and get copies of canceled checks or call their utility companies or other service providers to get proof of payment documents.

“You need to send whatever form of proof you can get,” Gosnick said. “For the most part, the IRS examiners are very reasonable people, and they want to do what they can. They know that if I, as the taxpayer, think their decision is improper, I will refile my application, and they don't like to be reversed on appeal.”

As part of the disclosure process, OIC applicants also must explain gifts and support they receive from outside sources — a substantial issue for many applicants who receive gifts from relatives and friends just to live, attorneys say.

“The IRS won't hold those things against the taxpayer per se, but you have to explain them,” Shamoun said. “I always advise clients to get a statement from the person they borrowed from or received support from.”

Cocklereece also advises his clients to keep a meticulous dossier of any financial activity that occurs after an OIC application is filed, as it often takes months for the IRS to process applications, and the agency asks for updated financial information when it actively reviews an application.

Some taxpayers may fear that submitting so much financial information could put them at risk of an IRS audit in the event their OIC application is denied, but attorneys say the risk is so small that it shouldn't dissuade taxpayers from crafting their best possible application.

“I find that there tends to not be great interdepartmental communication within the IRS, so although the information could possibly raise an audit and corrections risk, if you go to a tax practitioner and fill out the OIC forms correctly, then really you shouldn't worry,” Lewis said.

### **Sell Your Story**

It is imperative that OIC applicants offer a highly organized application that is divided into sections, tabbed with headings and, most importantly, shares a story as to why the applicant simply cannot pay his or her tax debts in full, Shamoun says.

The IRS considers a slew of factors, including age, when determining a taxpayer's future ability to pay the tax debt in question, and Shamoun says it's important for taxpayers to thoroughly describe the events in their life that caused their tax debt to accrue and further explain why they cannot resolve the debt.

"For example, if a lawyer loses his or her job, accrues significant tax debt and takes a bartending job to survive, the IRS will likely deny the lawyer's OIC application because they'll say it appears the attorney will do better in the years to come once he or she is re-employed in the legal field and leaves bartending," Shamoun said.

Lewis also advises tax attorneys to employ caution if using an "exceptional circumstances" rationale to support a client's OIC application.

"It's referred to broadly in the OIC form, but if you go to the Internal Revenue Code, it's a very limited exception," Lewis said. "It requires the taxpayer pay particular attention to specific financial standards set out by the IRS."

### **Keep Your Future Taxes Clean**

Receiving an OIC approval is cause for celebration, but the good news signals the beginning, not the end, of a taxpayer's responsibilities. The IRS requires OIC recipients to comply with their tax obligations for five years after their application is approved or suffer a revocation of their OIC deal.

This type of occurrence is rare, attorneys say, as taxpayers who have secured a prized OIC tend to capitalize on the opportunity.

"I haven't ever had that happen, not to say that there aren't clients out there like that, but it seems to me that a lot of tax problems involve personal problems — a client loses a job or suffers a sickness or experiences a death in the family," Cocklereece said. "So when they get a clean start, they take it."

--Editing by Jeremy Barker and Philip Shea.

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