



Offer in Compromise Program

The New York State Offer in Compromise Program is designed to help financially distressed taxpayers who face overwhelming tax liabilities. This includes any liability administered by the Tax Department. Taxpayers accepted into the program may pay a reasonable amount as a compromise, satisfying the debt in full. While we carefully review and consider every offer in compromise, we do not accept all offers. While reviewing an offer, we may continue efforts to collect the debt.

If the fixed and final amount owed is more than \$100,000 (not including interest and penalties), a New York State Supreme Court justice must approve the offer in compromise.

Who is eligible?

Generally, we may consider offers in compromise from the following taxpayers:

- individuals and businesses discharged from bankruptcy
- individuals and businesses that are insolvent (liabilities, including tax liabilities, exceed the fair market value of assets)
- individuals (not businesses) for whom paying the debt in full would cause undue economic hardship

To participate, taxpayers must have filed all required New York State tax returns.

The amount taxpayers propose as a compromise must be an amount we **realistically** expect we could collect within a reasonable period of time. It is based on the total value of assets and the amount we could expect to collect from anticipated future income. Otherwise, the amount proposed must be justified by information the taxpayer submits.

What is undue economic hardship?

Undue economic hardship means that an individual taxpayer is unable to pay reasonable basic living expenses, which are those providing for the health, welfare, and production of income for their family. We use Internal Revenue Service (IRS) standards to help determine your allowable basic living expenses, available at irs.gov.

We consider other factors, including:

- age, employment status, and employment history
- inability to earn income because of long-term illness, medical condition, or disability
- obligations to dependents
- extraordinary circumstances, such as special educational expenses, medical catastrophe, or natural disaster
- inability to borrow against or liquidate assets due to hardship

Undue economic hardship does not include an inability to maintain an affluent or luxurious lifestyle.

What forms do taxpayers need?

- Form DTF-4.1, *Offer in Compromise (for fixed and final liabilities)*, or Form DTF-4, *Offer in Compromise (for liabilities not fixed and final, and subject to administrative review)*
- Form DTF-5, *Statement of Financial Condition*, including copies of:
 - the last three federal income tax returns
 - a credit report less than 30 days old
 - the last 12 months of statements from all banks or financial institutions

- Individuals seeking relief based on undue economic hardship must include a statement explaining why paying the full amount would cause undue economic hardship. Include any supporting documents.

Send the forms, and any required statements and documents, to:

**NYS TAX DEPARTMENT
CED OFFER IN COMPROMISE UNIT
W A HARRIMAN CAMPUS
ALBANY NY 12227-5100**

We will send confirmation when we receive the documentation. If all required statements and documents are not included, we will notify the taxpayer that the application is not complete. If the missing material does not arrive within a specified time, we will not process the application.

May a taxpayer withdraw an offer in compromise?

A taxpayer or representative may withdraw an offer any time before our final decision. If we request information and it does not arrive by the deadline provided, we will consider the offer as withdrawn.

If we accept the offer in compromise:

If we accept the offer, we will provide a written notification detailing the terms and conditions, including:

- Taxpayers agree to remain fully compliant with all Tax Law requirements, including filing returns and paying tax when required, for the next five years.
- If there are any tax refunds, offsets, credits, or funds payable to taxpayers that are available to New York State (for example, lottery offsets and unclaimed funds), for periods before and including the calendar year in which we accepted the offer, we will apply them to the original outstanding liability. If there is any excess, we will refund it to the taxpayer.
- Taxpayers waive any statute of limitations defenses against the assessment and collection of the liability being compromised. Taxpayers also waive any statute of limitations defenses against the issuance of new assessments for the compromised liability in the event a taxpayer fails to comply with the terms of the offer.
- Taxpayers agree to forfeit any current capital loss or net operating loss credits taken on any future New York State tax returns.

If we do not accept the offer in compromise:

If we do not accept the offer, we will notify the taxpayer or authorized representative in writing. Examples of reasons for us not to accept an offer include, but are not limited to:

- The taxpayer does not meet the requirements of New York State Tax Law.
- The taxpayer submitted false or misleading information.
- The taxpayer failed to make a full financial disclosure.
- There is evidence that after the taxpayer learned of the liability, some of the taxpayer's assets were transferred.
- The taxpayer shows lack of a good faith effort to repay the liability.
- The liability directly relates to a crime for which the taxpayer pleaded or was found guilty.

- Accepting the offer would undermine voluntary tax compliance.
- Accepting the offer would not be in the best interest of the state.

Under the following circumstances, the taxpayer may ask us to reconsider the offer:

- There is a material change in the circumstances.
- We misinterpreted some of the information supplied.
- The taxpayer substantially increases the amount originally offered.

What if a taxpayer can't fulfill the offer?

If a taxpayer fails to meet all the terms and conditions of the offer in compromise, the offer is in default. We will give the taxpayer a chance to remedy the default. If the taxpayer fails to do so, we will revoke the offer and reinstate the original liability, including all interest and penalties, minus any payments made.

What if two taxpayers have joint income tax liabilities?

If two taxpayers have joint income tax liabilities, each may make an offer together on one Form DTF-4.1 or Form DTF-4, or each may make a separate offer. If we accept only one of the two offers, once that taxpayer pays we forgive further payment **only** for that taxpayer. The other taxpayer continues to be liable for the remaining balance and subject to collection.

What if a taxpayer owes trust taxes?

Trust taxes include withholding tax and sales tax. We normally do not accept offers for less than the amount of the trust tax owed (not including penalties and interest). However, taxpayers wishing to make such an offer must include a statement of the reasons for the failure to pay the tax, along with any supporting documents. We will consider whether the business is still in operation, whether the trust taxes were actually collected, and determine if the offer is in the best interest of all parties concerned.

What if a taxpayer is assessed as a responsible person and the business is now closed?

A taxpayer assessed as a responsible person liable for collecting and paying trust taxes for a closed business may make an offer in compromise for their liabilities, separate from the business. Any or all of the responsible persons may make an individual offer, and we will make a separate determination for each.

If we accept a responsible person's offer, their payments reduce the business's liability by that same amount. However, after they have paid their offer in full, the liability of the business and of any other responsible persons remains open and collectible, reduced by the amount of the payments already made. If a closed business applies for an offer, all responsible persons must also apply.

What if a taxpayer is assessed as a responsible person and the business is still in operation?

A taxpayer assessed as a responsible person liable for collection and paying trust taxes for an open business may make an offer in compromise for their liabilities. This offer must include all responsible persons and all open businesses.

What if a taxpayer also makes an offer to the IRS?

New York State's program operates independently from similar programs offered by the IRS, and the guidelines for accepting offers may differ. However, when applying for the state program, as part of the application a taxpayer may include a copy of the collection information statement given to the IRS.

Other Tax Law provisions related to offer in compromise

Liabilities not subject to administrative review (Tax Law § 171.15th)

Liabilities fixed and final. These are tax liabilities where you do not have protest or appeal rights and are not subject to administrative review. You have a fixed and final tax liability if you owe tax, interest, or penalties due to: a) a math or clerical error on a return, b) a change the IRS made to your federal return, or c) your failure to pay on time the tax that you reported due on your return. You can still make an offer to compromise a fixed and final tax liability. We may also consider offers from taxpayers that were discharged from bankruptcy, that are insolvent, or (for individual taxpayers only) for whom collection in full would cause undue economic hardship. Use Form DTF-4.1.

Liabilities still subject to administrative review (Tax Law § 171.18th-a)

Liabilities not fixed and final. These are liabilities where you still have protest or appeal rights available. We may consider offers from taxpayers that were discharged from bankruptcy, that are insolvent, or (for individual taxpayers only) for whom collection in full would cause undue economic hardship. In addition, we may consider an offer if there is doubt about the taxpayer's liability for the taxes due. Use Form DTF-4.

Spousal Joint Tax Liabilities (Tax Law § 171.18th-d)

If you have filed a joint income tax return and owe a tax from that return, you can offer to compromise your share of the tax for that year. You must meet the following conditions:

1. At the time of the offer, you and your spouse must be: a) divorced, b) legally separated, or c) living apart and ineligible to file a joint return; and
2. You would need to demonstrate that collection against you of your spouse's share of the liability cannot be accomplished in a reasonable period of time without imposing a substantial economic hardship on you.

Substantial economic hardship does not require that you file for bankruptcy or that you are insolvent. Substantial economic hardship occurs when a taxpayer is unable to pay reasonable basic living expenses plus the full tax owed.

You must be in compliance with all payment and filing requirements for tax periods not included in the offer. Use Form DTF-4.2, *Compromise of Spousal Share of Liability on Joint Tax Return*.

More information

This publication is intended only as an overview of the offer in compromise process. For specific details, see 20 NYCRR 5000 and 20 NYCRR 5005 regarding compromise regulations.

For questions, call 518-591-5000. For forms and more information, visit our website at www.tax.ny.gov. You can view all your unpaid liabilities on your *Online Services* account. If you do not have an *Online Services* account, you can visit our website at www.tax.ny.gov to create one.