

Chapter 8: IRS Update

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Corrections were made to this workbook through January of 2008. No subsequent modifications were made.

HAVING A TAX PROBLEM? NEED HELP?

In Taxpayer Bill of Rights 2, Congress established the Office of the Taxpayer Advocate. This office provides an independent system to ensure that tax problems not resolved through normal channels are addressed in a prompt and fair manner. The National Taxpayer Advocate is appointed by the Secretary of the Treasury, and reports directly to the Commissioner as a separate function of the IRS. Currently, Nina Olson heads the program. The goals of the Taxpayer Advocate Service are to protect individual and business taxpayer rights and to reduce taxpayer burden. The Taxpayer Advocate independently represents taxpayer interests and concerns within the IRS by:

1. Ensuring that taxpayer problems not resolved through normal channels are promptly and fairly handled,
2. Identifying issues that increase burden or create problems for taxpayers, and
3. Bringing identified issues to the attention of IRS management and making legislative proposals where necessary.

Each state and campus has at least one local Taxpayer Advocate. This person is independent of the local IRS office and reports directly to the National Taxpayer Advocate.

The Taxpayer Advocate Service's toll-free phone number is 1-877-777-4778. Taxpayers may also complete Form 911, *Request for Taxpayer Advocate Service Assistance*, and fax or mail it to the local office. Form 911 can be obtained (via U.S. mail) by calling 1-800-829-3676, or online at www.irs.gov. The Form 911 requires the Taxpayer Advocate Service to determine whether significant taxpayer hardship exists and what actions can be taken to relieve the hardship.¹

If a tax practitioner has trouble with the Automated Collection System (ACS) toll-free number listed on their notice, they can contact the IRS Practitioner Priority Service's toll-free number at 1-866-860-4259 before contacting the Taxpayer Advocate.

¹ www.irs.gov/advocate

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The Advocate makes an annual report to Congress. In her last report, Ms. Olson listed the most serious problems encountered by taxpayers for the year that ended December 31, 2006. The top three items on a list of 22 are:

1. **Alternative Minimum Tax for Individuals.** The Advocate has been suggesting the repeal of AMT since 2001. She is critical of the AMT because of its complexity. In addition, taxpayers may not know they are liable for the tax until they file their tax return. At that time, they may have underpaid their estimated tax and be liable for penalties and interest.

This problem is illustrated with the following two examples.

Example 1. Gwen is a mother of five children who earned \$57,000 in 2005. She is seeking a legal separation from her husband, and they lived apart during the final months of the year. Gwen filed as married filing separately. Because she was entitled to claim the children as her dependents and claim the child tax credit, she had no tax liability under the regular tax rules. Consequently, she did not have any tax withheld from her paychecks. When she prepared her tax return, she discovered that she had a tax liability of \$2,380 due to the AMT. Because of the AMT tax liability, she also owed a \$95 penalty for failure to pay estimated tax.

Example 2. Emma filed a joint return claiming two dependent children for 2005. She had an adjusted gross income (AGI) of \$190,000 and paid state income and property taxes totaling \$28,000. Emma had 90% of her regular tax liability withheld from her paycheck. When Emma prepared her return, she discovered that she had an additional tax liability of \$5,042 due to the AMT. Because of the additional AMT tax liability, she also owed a \$202 penalty for failure to pay estimated tax.

2. **The Tax Gap.** The Advocate is critical of the \$290 billion annual tax gap. While the gap is critical for the government, it is also a serious problem for taxpayers. The vast majority of taxpayers are compliant and pay their taxes willingly and honestly each year. If the \$290 billion tax gap is divided by the approximately 130 million individual taxpayers, the result shows that each return is effectively charged a “surtax” of \$2,200 to subsidize the noncompliant taxpayers. The Advocate offers three broad strategies to close the tax gap:
 - Fundamental tax simplification, with an emphasis on making economic transactions more transparent;
 - Expanded third-party information reporting and, in certain situations, tax withholding on nonwage income; and
 - Improved IRS compliance initiatives that appropriately balance taxpayer service and enforcement.
3. **Transparency of the IRS.** All federal agencies, including the IRS, are required to make certain procedures and guidance available to the public. While the IRS makes tremendous amounts of information available, they are not in full compliance. Consequently, the IRS is deprived of valuable public feedback that it could use to improve procedures and guidance. The Advocate’s report gives the following example:

For example, since November 2004, the specialized group of IRS employees that is supposed to evaluate all offers to compromise tax debts based on “equity and public policy” considerations has been using unpublished guidance to determine whether to accept such offers. As a result, some taxpayers who would be eligible for an offer may not have bothered to apply because they did not know they would qualify. The IRS employees who screened the offers that taxpayers did submit may not have referred them to the specialized group because the employees did not know the taxpayers would qualify either. Since taxpayers did not know what facts the IRS would consider, they most probably did not emphasize (in their offer packages) the facts that the IRS considers most important. Thus, the IRS is more likely to have rejected such offers. Further, the IRS has not had the opportunity to receive input from the public that would be helpful in refining its guidance.

The 2006 Annual Report is available on the IRS website.

IRS LIENS

NOTICE OF FEDERAL TAX LIEN

Liens give the IRS a legal claim to taxpayer property as security for their tax debt. A Notice of Federal Tax Lien may be filed **only after**:

- The IRS assesses a liability;
- A notice and demand for payment (a bill that tells the taxpayer how much they owe) is sent; and
- The taxpayer fails to pay the debt within 10 days after IRS notification.

Once a federal tax lien is filed, the taxpayer's creditors are publicly notified that the IRS has a claim against all the taxpayer's property, including property acquired after the lien is filed. The notice is used by the courts to establish priority in certain situations, such as bankruptcy proceedings and real estate sales. Once a lien is filed, the taxpayer's credit rating may be harmed.

RELEASING A LIEN

The IRS issues a release of the Notice of Federal Tax Lien:²

- Within 30 days after the taxpayer makes a full payment of the tax deficiency (including interest and other additions), or
- Within 30 days after accepting a bond guaranteeing payment of the debt.

In addition, the taxpayer must pay all fees that a state or other jurisdiction charges to file and release the lien. These fees are added to the total amount the taxpayer owes.

APPLYING FOR A DISCHARGE OF FEDERAL TAX LIEN

If a taxpayer relinquishes ownership of property (e.g., selling their home) they may apply for a Certificate of Discharge. Each application for a discharge of a tax lien releases the effects of the lien against one piece of property. Instructions for how to apply for a certificate of discharge can be found in IRS Pub. 783, *Instructions on How to Apply for a Certificate of Discharge of Property From a Federal Tax Lien*.

MAKING THE IRS LIEN SECONDARY TO ANOTHER LIEN

In some cases, a federal tax lien can be made secondary to another lien. This process is called subordination. Instructions for how to request subordination can be found in IRS Pub. 784, *How to Prepare an Application for a Certificate of Subordination of Federal Tax Lien*.

LIEN INQUIRIES

If a taxpayer has questions regarding basic lien inquiries, such as routine lien releases and lien payoff amounts, he can contact the Centralized Lien Unit by calling the toll-free telephone number at 1-800-913-6050.

When faced with a complex lien issue, taxpayers should consider contacting the Collection Technical Services (TS) Advisory function. TS Advisory interacts with taxpayers on complex lien issues such as: certificate of discharge, subordination, subrogation, nonattachment, withdrawal, and other complex lien issues. Taxpayers can refer to IRS Pub. 4235, *Technical Service Advisory Group Addresses*, to locate the appropriate office to contact for assistance.

RELEASE FROM A LIEN

Instructions for how to request a release of a federal tax lien are found in IRS Pub. 1450, *Instructions on How to Request a Certificate of Release of Federal Tax Lien*. **Usually, 10 years after a tax is assessed, the lien releases automatically, unless the IRS refiles the lien.**

² IRS Pub. 1450, *A Certificate of Release of Federal Tax Lien*

THE COLLECTION PROCESS

The IRS recognizes that sometimes taxpayers are unable to pay the taxes they owe. Taxpayers who are unable to pay their full tax liability should contact the IRS as soon as possible. There are a number of payment solutions the IRS may be able to offer to the taxpayer, including the following:

- **Extension of Time to Pay.** The taxpayer may be eligible for a short extension of up to 120 days to pay taxes. A taxpayer should request an extension if he will be able to pay all his taxes within the extended timeframe.
- **Installment Agreement.** In FY 2005, 2.6 million taxpayers paid their tax bills in monthly payments. Details on how to establish an installment agreement are provided in the next section titled “Establishing an Installment Agreement.”
- **Delaying Collection.** If the IRS determines that a taxpayer is temporarily unable to pay, formal collection procedures may be delayed until some time in the future when the taxpayer’s financial situation improves.
- **Offer in Compromise.** A last resort for taxpayers who are unable to pay all their taxes and who are unable to use the other options, is an offer in compromise (OIC). An OIC allows taxpayers to settle their tax liabilities for less than the full amount owed. A checklist found on Form 656, *Offer in Compromise*, can help taxpayers determine if they meet the minimum eligibility requirements for the OIC.

ESTABLISHING AN INSTALLMENT AGREEMENT

Whether it is called an installment agreement, payment agreement, payment option, or payment plan, the idea is the same. Taxpayers make payments on the tax they owe. For those who are unable to pay their tax debt immediately, an installment agreement can be a reasonable option.³

To be eligible for an installment agreement, a taxpayer **must have filed all required returns and paid all required estimated tax payments**, and if the taxpayer owns a business with employees, he must **stay current with all of his employment tax filing and payment requirements**.

Taxpayers can request installment agreements that allow them to pay their tax deficiencies in a variety of ways, including:

- Direct withdrawal from a bank account,
- Payroll deduction from wages, or
- Mail directly to the IRS.

An installment agreement can be requested at the time the taxpayer files his tax return with a balance due. Form 9465, *Installment Agreement Request*, is completed and attached to the front of the return. The taxpayer can also attach his own written request for a payment plan and attach it to the front of the return.

For taxpayers who did not request an installment agreement at the time of filing, and who received a bill showing a total liability of \$25,000 or less (including taxes, penalties, and interest), a streamlined installment agreement can be requested by:

1. Utilizing the online payment agreement (OPA) at **www.irs.gov**,
2. Calling the number shown on the bill or notice, or
3. Attaching a completed Form 9465 to the front of the notice and mailing it back to the address provided on the bill.

These streamlined agreements do not require a collection information statement. However, **they must be paid within five years**.

³ Go to www.irs.gov and search for installment agreements

If the taxpayer owes more than \$25,000 in combined taxes (including penalties and interest), he may still qualify for an installment agreement. In this case, Form 433-F, *Collection Information Statement*, might need to be completed. Taxpayers should call the number on the bill, or mail Form 9465 and Form 433-F to the address on the bill.

For business installment agreements, if the preassessed liabilities plus the unpaid balance of assessment is \$10,000 or less, the taxpayer may qualify for a streamlined agreement. **The liability must be paid within 24 months or before the collection statute of limitations expires.** The taxpayer must stay current with all filing and payment requirements throughout the agreement. This type of payment plan does **not** require:

- A collection information statement,
- Management approval, or
- A trust fund recovery penalty determination.

The IRS should respond to an installment agreement request within 30 days to inform the taxpayer that:

- The request was approved;
- The request was denied; or
- Additional information is needed.

If a taxpayer has an installment agreement in place from a previous tax debt and his financial situation has changed, or he incurs an additional liability, the IRS may be able to modify or restructure the existing installment agreement to include the additional amounts owed into a single agreement. Additionally, a collection information statement may need to be completed in order to further illustrate the taxpayer's current financial situation.

INSTALLMENT AGREEMENT USER FEE INCREASE

Beginning January 1, 2007, the IRS implemented revised user fees for installment agreements. For eligible individuals with income at or below certain levels, the user fee for entering into a new agreement will not increase from the 2006 level.

Taxpayers with income at or below established levels, based on the Department of Health and Human Services poverty guidelines, can apply to pay a reduced user fee of \$43 for establishing new installment agreements. Information about requesting the reduced user fee is included in the installment agreement acceptance letters sent to individuals.

Arrangements	Old Fee	New Fee
Entering into a non-direct debit installment agreement	\$43	\$105
Entering into a direct debit installment agreement	43	52
Entering into a reinstated installment agreement regardless of income level	24	45

Note. See Chapter 15, "Rulings and Cases" for Form 13844, *Application for Reduced User Fee For Installment Agreements*.

LEGISLATION ALLOWS PARTIAL PAYMENT OPTION

On January 17, 2005, the IRS implemented an additional payment option for taxpayers with outstanding federal tax liabilities. The partial payment installment agreement (PPIA) option became possible with the passage of the American Jobs Creation Act of 2004. The new legislation amended IRC §6159, allowing the IRS to enter into installment agreements that result in partial payment of a total tax liability.

Prior to enactment of this legislation, taxpayers who could not fully pay their outstanding tax liabilities could only enter into an agreement with the IRS if the agreement resulted in full payment of the liability. This requirement left taxpayers who were unable to satisfy their total bill with limited payment options. Consequently, the PPIA payment option provides an appropriate payment option for many taxpayers.

Taxpayers requesting a PPIA must provide complete and accurate financial information that is reviewed and verified by the IRS. Taxpayers are also required to address equity in assets that can be utilized to reduce or fully pay the amount of the outstanding liability.

In addition, taxpayers granted PPIAs are subject to a subsequent financial review every two years. Based on the review, installment payments can be increased, or the PPIA can be terminated if the taxpayer's financial condition improves.

ONLINE PAYMENT AGREEMENT APPLICATION

Taxpayers who owe delinquent federal taxes are now able to apply for a payment agreement using an online payment agreement (OPA) application, available on the IRS website. The OPA can provide an easy way to voluntarily pay tax liabilities.⁴

The web-based application allows eligible taxpayers or their authorized representative to qualify for, apply for, and receive an immediate notification of approval for installment agreements. In order for an authorized representative to utilize the OPA on behalf of the taxpayer, a valid Form 2848, *Power of Attorney and Declaration of Representative*, must be on file with the IRS.

Taxpayers with a balance due notice can access the application using the following information:

- Their taxpayer identification number (generally a social security number), or
- A personal identification number, which can be established online using the caller identification number printed on the balance due notice.

Taxpayers who have not yet received a bill on current year 1040 liabilities must provide the following information to establish a preassessed agreement on current year returns:

- Balance due shown on the return,
- Taxpayer identification number,
- Spouse's taxpayer identification number (if applicable),
- Date of birth,
- Adjusted gross income from the prior year tax return, and
- Total tax from the prior year tax return.

⁴ IRS News Release IR-2007-68 (March 23, 2007)

In order to use the online application, taxpayers must have filed all required tax returns. Three payment options are available with the OPA:

1. Pay in full within 10 days (this saves interest and penalties);
2. Short-term extension up to 120 days (no user fee is charged, but penalties and interest accrue); or
3. Monthly installment agreement plan (a user fee is charged and penalties and interest accrue).

REFUNDS

One condition of an installment agreement requires that any **future taxpayer refunds be automatically applied to outstanding debts associated with federal tax, state tax, student loans or child support.** If the amount of the refund does not satisfy the tax debt, the taxpayer's installment agreement continues until the terms are met.

APPEAL OF REJECTED INSTALLMENT AGREEMENTS

If the IRS rejects a taxpayer's request for an installment agreement, the taxpayer may appeal the decision. Also, if an existing installment agreement is terminated by the IRS due to the taxpayer's failure to make scheduled payments, the entire outstanding balance becomes due. Taxpayers have the right to appeal installment agreement terminations. The collection appeals program (CAP) handles all appeal requests. Information about appealing a denial or termination of installment agreement is found in IRS Pub. 1660, *Collection Appeal Rights*.

OFFER IN COMPROMISE

INTRODUCTION

The federal government has accounts receivable that are fully or partially uncollectible due to the financial circumstances of taxpayers. Additionally, some government receivables may not be collectible because of legitimate disputes as to the amounts actually owed. In certain cases, these types of collection issues are resolved through a process of negotiation and compromise.

DEFINITION

An offer in compromise (OIC) is a process of negotiation and compromise.⁵ An OIC represents an agreement between a taxpayer and the IRS that settles the taxpayer's liabilities for less than the full amount owed. An OIC is a last resort and, in most cases, is not granted if it is found that the taxpayer can settle his liability via an installment agreement or other practical means.

⁵. IRS Policy Statement P-5-100, (July 2, 2007)

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OFFER IN COMPROMISE STATISTICS

Offer in Compromise Program — FY 2006

	Total	Centralized OIC	Field OIC
Accepted offers	14,734	8,219	6,515
Rejected offers	14,945	8,705	6,240
Subtotal	29,679	16,924	12,755
Returned offers	12,350	5,330	7,020
Withdrawn/terminated	5,407	2,183	3,224
Total returned/withdrawn	17,757	7,513	10,244
Total processable offers	47,436	24,437	22,999
Nonprocessable offers	16,733	16,722	11
Total dispositions	64,169	41,159	23,010
Acceptance rate	49.6%	48.6%	51.1%
Percent of returned offers	26.0%	21.8%	30.5%
Acceptance rate of all processable offers disposed	31.1%	33.6%	28.3%

The IRS reports that the Brookhaven and Memphis centralized offer in compromise (COIC) sites are processing 94% of their offers within 0–6 months. The IRS field groups are reporting that 70% of their offers are processed within 0–9 months.

All new offers are received in the COIC sites to determine process ability and for initial processing. Once the COIC units have loaded the offer into the automated offer in compromise (AOIC) system and made a processability determination, all processable offers in the following categories are transferred to the appropriate collection area field offer group:

1. Corporations
2. Partnerships
3. Estates and trusts
4. Incarcerated taxpayers
5. Trust fund recover penalty: doubt as to liability
6. Self-employed taxpayers

COIC usually processes all offers that indicate an ability to pay the account in full on their application. This type of case is referred to as an “Obvious Full Pay.”

RECENT CHANGES IN REQUESTING AN OIC

The Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA) was implemented on July 22, 2006. TIPRA resulted in significant changes to IRC §7122 and the OIC process.

A revised Form 656, *Offer in Compromise*, was implemented in February 2007. It is meant to be an all inclusive OIC information package containing fee and payment worksheets, instructions, other information, and required forms. The new Form 656 package contains several tax burden reduction features, which include the following:

1. A “processability” section allows taxpayers to determine whether they qualify for OIC consideration before they spend time preparing the Form 656.

Step One: Is Your Offer in Compromise “Processable?”



PLEASE DO NOT GO ANY FURTHER WITHOUT FIRST DETERMINING WHETHER OR NOT YOU ARE ELIGIBLE TO HAVE YOUR OFFER IN COMPROMISE PROCESSED AT THIS TIME.

In order to determine whether or not you are eligible to have your Offer in Compromise processed, please answer the three questions below:

- | | YES | NO |
|---|--------------------------|--------------------------|
| 1. Do you currently have an open bankruptcy proceeding? You should contact your Bankruptcy Attorney if you are not certain. If you are involved in an open bankruptcy proceeding, contact your local IRS Insolvency office. If you do not know the location of your local IRS Insolvency office, then you may call 1-800-829-1040. They will be able to provide you with the local number. Any resolution of your outstanding tax liabilities generally must take place within the context of your bankruptcy proceeding. If you answered YES to this question, then stop here. You are not eligible to have your offer considered or processed at this time. | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Offer in Compromise Application Fee — Your offer must include the \$150 application fee or a completed Form 656-A, <i>Income Certification for Offer in Compromise Application Fee and Payment</i> , if you are requesting an exception of the fee because of your income. Offers received without the \$150 fee or a completed Form 656-A will not be accepted for processing. Please see Step Five on Page 12 of this package for more information on the application fee and to determine if you qualify for the exception.

Have you attached the \$150 application fee or the Form 656-A, which ever is applicable, to the Form 656? If you answered NO to this question, Stop Here. You are not eligible to have your offer considered or processed at this time. | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Cash payment and Periodic Payment Offers — Your offer must include your 20% payment for Lump Sum Cash payment offers, or your first installment payment of your Periodic Payment offer (Short Term or Deferred). If you are requesting an exception to the 20% down payment or your initial periodic payment because of your income level, then you must complete Form 656-A, <i>Certification of Offer in Compromise Application Fee and Payment</i> . Offers received without one of these will not be accepted for processing. Please see Step Five on Page 12 of this package for more information on the Cash Payment and Periodic Payment Offer.

Have you attached either the 20% payment for Lump Sum Cash payment offers or your first installment payment for a Periodic Payment Offer, or, the Form 656-A? If you answered NO to this question, Stop Here. You are not eligible to have your offer considered or processed at this time. | <input type="checkbox"/> | <input type="checkbox"/> |

NOTE: If you currently have an approved installment agreement with IRS and are currently making installment payments to IRS, then you may stop making those installment agreement payments when you submit a Periodic Payment offer. This will allow you to make your payments required under the Periodic Payment guidelines. You do not have to make both installment agreement payments and periodic payments at the same time.

However this procedure does not apply to Lump Sum Cash Offers. If you submit a Lump Sum Cash offer and you are currently making installment agreement payments, then you must continue to make your installment agreement payments until your offer is accepted. If it is not accepted, then installment agreement payments must continue.

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2. A worksheet is used to calculate an offer amount.

Worksheet to Calculate an Offer Amount

For use by Wage Earners and Self-Employed Individuals.

Keep this worksheet for your records.
Do not send to IRS.

Use this Worksheet to calculate an offer amount using information from Form 433-A.

1. Enter total checking account balances from Item 11c	A
2. Enter total other account balances from Item 12c	B
	If less than 0, enter 0
3. Enter total investments from Item 13d	C
4. Enter total cash on hand from Item 14a	D
5. Enter life insurance cash value from Item 16f	E
6. Enter total accounts/notes receivable from Item 23m	F
	G
Subtotal: Add boxes A through F =	

7. Purchased Automobiles, Trucks, and Other Licensed Assets

	Enter current value for each asset		Enter loan balance for each asset		Individual asset value (if less than 0, enter 0)
From line 18a	\$ _____ x .8 = \$ _____	—\$ _____	=	_____	
From line 18b	\$ _____ x .8 = \$ _____	—\$ _____	=	_____	
From line 18c	\$ _____ x .8 = \$ _____	—\$ _____	=	_____	
Subtotal =					H

8. Real Estate

	Enter current value for each asset		Enter loan balance for each asset		Individual asset value (if less than 0, enter 0)
From line 20a	\$ _____ x .8 = \$ _____	—\$ _____	=	_____	
From line 20b	\$ _____ x .8 = \$ _____	—\$ _____	=	_____	
Subtotal =					I

9. Personal Assets

	Enter current value for each asset		Enter loan balance for each asset		Individual asset value (if less than 0, enter 0)
From line 21b	\$ _____ x .8 = \$ _____	—\$ _____	=	_____	
From line 21c	\$ _____ x .8 = \$ _____	—\$ _____	=	_____	
From line 21d	\$ _____ x .8 = \$ _____	—\$ _____	=	_____	
From line 21e	\$ _____ x .8 = \$ _____	—\$ _____	=	_____	
Subtotal =					J

From line 21a	\$ _____ x .8 = \$ _____	—\$ _____	=	_____	
Subtract —\$ 7720.00					
Subtotal =					K

10. Business Assets

	Enter current value for each asset		Enter loan balance for each asset		Individual asset value (if less than 0, enter 0)
From line 22b	\$ _____ x .8 = \$ _____	—\$ _____	=	_____	
From line 22c	\$ _____ x .8 = \$ _____	—\$ _____	=	_____	
From line 22d	\$ _____ x .8 = \$ _____	—\$ _____	=	_____	
From line 22e	\$ _____ x .8 = \$ _____	—\$ _____	=	_____	
Subtotal =					L

From line 22a	\$ _____ x .8 = \$ _____	—\$ _____	=	_____	
Subtract —\$ 3860.00					
Subtotal =					M

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11. Add amounts in Boxes G through M to obtain your total equity and assets = N

12. Enter amount from Item 34 \$ _____
Enter amount from Item 45 and subtract — \$ _____

Net Difference = O

This amount would be available to pay monthly on your tax liability.

If Box O is 0 or less, STOP. Use the amount from Box N to base your offer amount in Section IV of Form 656. **Your offer amount must equal or exceed (*) the amount shown in Box N.**

13a.

If you will pay the offer amount in **5 months or less:**

Enter amount from Box O \$ _____

Multiply by **x 48**
(or the number of months remaining on the ten-year statutory period for collection, whichever is less)

= P

Enter amount from Box N + Q

Add amounts in Box P and Box Q = R

Use the amount from Box R to base your offer amount in Section IV of Form 656.
Note: Your offer amount must equal or exceed (*) the amount shown in Box R.

13b.

If you will pay the offer amount in more than 5 months but less than 2 years:

Enter amount from Box O \$ _____

Multiply by **x 60**
(or the number of months remaining on the ten-year statutory period for collection, whichever is less)

= S

Enter amount from Box N + T

Add amounts in Box S and Box T = U

Use the amount from Box U to base your offer amount in Section IV of Form 656.
Note: Your offer amount must equal or exceed (*) the amount shown in Box U.

Note: Do not compute your offer amount using 13a or 13b if your statute expiration date(s) is less than five years from the date of your offer. Instead, refer to Page 6 under Deferred Payment Offer.

* Unless you are submitting an offer under effective tax administration or doubt as to collectibility with special circumstances considerations, as described on Page 1.

By law, the IRS has the authority to collect outstanding federal taxes for ten years from the date your liability is assessed. There may be circumstances that extend the ten year collection statute such as when a taxpayer files bankruptcy or an Offer in Compromise.

The IRS may adjust the RCP during the investigation to a higher or lower amount, depending upon the facts and circumstances of your individual case.

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3. A worksheet is used to determine eligibility for claiming an exception to the \$150 application fee and initial payments.

Offer in Compromise Application Fee and Payment Worksheet

If you answered YES to question one on Page 2, then do not proceed any further. You are not eligible to have your offer considered at this time.

If you answered NO to question one on Page 2 of this booklet, then you may be eligible to have your offer considered and you may proceed completing the worksheet. However, it is important that you use the current version Form 656 (Rev. 02-2007), *Offer in Compromise*, and the (Rev. 5-2001) versions of Forms 433-A, *Collection Information Statement for Wage Earners and Self-Employed Individuals*, and / or 433-B, *Collection Information Statement for Businesses* that are included in this package.

The application fee and payment does not apply to individuals whose income falls at or below levels based on IRS Offers in Compromise Monthly Low Income Guidelines. The exception for taxpayers with incomes below these levels only applies to individuals; it does not apply to other entities such as corporations or partnerships. If you are self employed, then you must first look at Section 9, Line 27 of the Form 433A. If you entered a net income from your business, then you may need to make an adjustment for this item. For the purposes of determining item 2, Total Household Monthly Income, you must deduct any depreciation of assets that you itemized on your Tax Form 1040 Schedule C, that was used to determine your net income from your business, line 27. Adjusting line 27 will affect the amount on line 34 of the Form 433A. Therefore line 34 must be adjusted and carried over to this worksheet item 2 for Total Household Monthly Income. If you had no depreciation of assets on Schedule C, then there is no adjustment to be made.

If you are an individual, follow the steps below to determine if you must remit the application fee along with your Form 656, Offer in Compromise.

1. **Family Unit Size** _____. Enter the total number of dependants (including yourself and your spouse) listed in Section 1 of Form 433-A, *Collection Information Statement for Wage Earners and Self-Employed individuals*.
2. **Total Household Monthly Income** _____. Enter the amount of your total household monthly income from Section 9, Line 34 of the Form 433-A, *Collection Information Statement for Wage Earners and Self-Employed Individuals*. Please see Page 4 under Step Two, item 5, for a definition of total household income.
3. Compare the information you entered in items 1 and 2, above, to the monthly IRS OIC Monthly Low Income Guidelines table below. Find the "Family Unit Size" equal to the number you entered in item 1. Next, find the column which represents where you reside (48 Contiguous states, DC ..., Hawaii or Alaska). Compare the "Total Household Monthly Income" you entered in item 2 to the number in the row and column that corresponds to your family unit size and residence. For example, if you reside in one of the 48 contiguous states, and your family unit size from item 1 above is 4, and your total household monthly income from item 2 above is \$3000, then you are exempt from the fee and payment because your income is less than the \$4,167 guideline amount.

IRS OIC Monthly Low Income Guidelines

Size of Family Unit	48 Contiguous States and D.C.	Hawaii	Alaska
1	\$2,042	\$2,348	\$2,552
2	\$2,750	\$3,163	\$3,438
3	\$3,458	\$3,977	\$4,323
4	\$4,167	\$4,792	\$5,208
5	\$4,875	\$5,606	\$6,094
6	\$5,583	\$6,421	\$6,979
7	\$6,292	\$7,235	\$7,865
8	\$7,000	\$8,050	\$8,750
For each additional person, add	\$708	\$815	\$885

4. If the total household monthly income you entered in item 2 is **more** than the amount shown for your family unit size and residence in the monthly IRS OIC Monthly Low Income Guidelines table above, **you must send the \$150 application fee and any 20% payment or first initial installment with each OIC you submit.**

Your check or money order should be made payable to the "United States Treasury" and attached to the front of your Form 656, *Offer in Compromise*. **Do Not Send Cash.** Send a separate application fee with each OIC; do not combine it with any other tax payments as this may delay processing of your OIC. Your OIC will be returned to you without further consideration if the application fee and the required payments are not properly remitted, or if your check is returned for insufficient funds.

5. If the total income you entered in item 2 is **equal to or less than** the amount shown for your family unit size and residence in the table above, do not send the application fee or the required payments. Sign and date Form 656-A, *Income Certification for Offer in Compromise Application Fee and Payment*. **Attach the certification and this worksheet to the front of your Form 656.**

Another new feature of the Form 656 is the paid preparer signature block (Section X). The aim of the signature block is to provide an additional taxpayer safeguard with regard to unscrupulous promoters offering a quick and easy “pennies on the dollar” fix to tax debt relief. The information contained in Section X is used to administer and enforce the Internal Revenue laws. In addition, it may be used to help regulate the practice of those subject to the Treasury Department’s Circular 230, *Regulations Governing the Practice of Attorneys, Certified Public Accountants, Enrolled Actuaries and Appraisers before the Internal Revenue Service*.

FORM 656 COMMON MISTAKES

Taxpayers must complete all items on Form 656. Attention to detail can save a taxpayer significant time and frustration during the OIC process. Some common errors that delay OIC processing include:

- Incorrect address (post office boxes are not acceptable),
- Taxpayer identification number missing,
- Employer identification number not included for an offer resulting from a sole proprietor liability,
- Unspecified tax liability periods/years,
- Tax periods included where no tax is due,
- Reason for compromise not checked,
- No “offer to pay” amount or an inappropriate amount shown (Form 656 contains a worksheet to assist taxpayers in calculating a correct offer amount),
- Signatures missing for joint liabilities,
- Too many signatures included for single liabilities, and
- OIC submitted by single taxpayer but includes joint liabilities.

A new Form 656-L, *Offer in Compromise (Doubt as to Liability)*, was developed. Unlike in previous years, the new version of Form 656-L cannot be filed concurrently with an OIC request under a different reason (e.g. doubt as to collectibility).

If the required documentation is not submitted with Form 656, the IRS issues one written request to the taxpayer asking for the missing information. If the information is not provided within 30 days, the OIC case is closed and returned to the taxpayer without the opportunity to appeal the decision. It is the taxpayer’s responsibility to ensure the IRS has the required information to make its determination, as well as to provide additional information upon request.

REVISED FORM 433, COLLECTION INFORMATION STATEMENTS

Not only did TIPRA result in changes to Form 656, it also revised Form 433-A, *Collection Information Statement for Wage Earners and Self Employed Individuals*, and Form 433-B, *Collection Information Statement for Businesses*. Some additions **common to both forms** include:

- A section describing required attachments,
- Lines for web-based business and e-commerce information,
- A section for financial analysis of collection potential (“IRS ONLY USE” section focuses revenue officers on information needed to conduct a thorough financial analysis to aid with best case resolution decisions), and
- A privacy act and disclosure message section.

Additionally, both forms were redesigned and reworded to encourage face-to-face interaction between the revenue officer and the taxpayer.

2007 Workbook

Some highlights specific to the **Form 433-A** include:

- A section to distinguish sole proprietor business income and expense information from individual income and expense information,
- Clarified instructions for wage earners and sole proprietors, and
- Equity blocks added for use with equity-in-assets review.

Some common **Form 433-A errors** that delay OIC processing include:

- Personal and real estate assets or income and expenses not accurately valued,
- Missing or incomplete financial verification documents,
- Signature date is six months or more older than the date of submission,
- All sections of the forms are not completed, and
- Bankruptcy discharge date is missing.

COLLECTION FINANCIAL STANDARDS AND NECESSARY EXPENSES

Collection financial standards are used to help determine a taxpayer's ability to pay a tax debt and for completing Form 433-A. A brief description of all three standards follows:

1. **National Standards.** These set allowances for food, clothing, and other items. The national standard allowances apply to every state except Alaska and Hawaii (where separate allowance tables apply). Taxpayers are allowed the total national standard amount for their family size and income level without questioning amounts actually spent.

Two-Person National Standards Based on Gross Monthly Income

Item	Less than \$833	\$833 to \$1,249	\$1,250 to \$1,666	\$1,667 to \$2,499	\$2,500 to \$3,333	\$3,334 to \$4,166	\$4,167 to \$5,833	\$5,834 and Over
Food	\$305	\$306	\$322	\$368	\$418	\$460	\$514	\$723
Housekeeping supplies	27	33	42	43	50	51	55	85
Apparel and services	83	91	92	93	98	126	141	277
Personal care products and services	25	27	33	37	40	50	56	83
Miscellaneous	138	138	138	138	138	138	138	138
Total	\$578	\$595	\$627	\$679	\$744	\$825	\$904	\$1,306

Caution. These amounts are being revised. They will be posted on the IRS web site on October 1, 2007, which is after the date this workbook is printed.

2. **Local Standards.** These set maximum allowances for housing and utility expenses. Local standards vary widely depending on location. Unlike the national standards, taxpayers are allowed to claim actual expenses paid or the local standard, whichever is less. There are separate standard allowance amounts for transportation expenses.
3. **Necessary Expenses.** These are expenses paid in order for a taxpayer to support his family's general health and welfare. Necessary expenses also include amounts paid in order to produce income. However, this expense allowance does not apply to business entities.

PAYMENT TERMS

TIPRA made several major changes to the OIC program, including tightening the rules for lump-sum offers and periodic-payment offers. Effective July 16, 2006, taxpayers submitting offers have three payment options:

- **Lump-Sum Cash Offer.** Upon written notice of acceptance, the offer is paid in five or fewer installments. Taxpayers submit a minimum payment of 20% of the total offer amount with Form 656.
- **Short-Term Periodic Payment Offer.** The offer amount must be paid within six months to two years from the date the IRS receives the offer. Taxpayers submit the first payment with Form 656, and continue to make scheduled payments during the offer investigation. If the taxpayer fails to make a scheduled payment, the IRS considers the lapse as a withdrawal of the offer.
- **Deferred Periodic Payment Offer.** The offer amount must be paid in 25 or more months, but within the time remaining on the statutory period for collection. Like the short-term periodic payment offer, taxpayers must submit the first payment with the Form 656 and continue to make scheduled payments during the offer investigation. If the taxpayer fails to make a scheduled payment, the IRS considers the lapse as a withdrawal of the offer.

The “20% of the total offer” criteria and the payment plans described above do not apply to individuals whose income falls at or below certain levels. Income levels are based on the table shown on page 266, “IRS OIC Monthly Low Income Guidelines.” This table is found in the new Form 656 booklet, which is obtained from the local IRS revenue officer, or on the IRS website under Forms and Publications. The low income exception does not apply to entities such as corporations or partnerships. If the taxpayer is self-employed, and claimed a depreciation expense on his Schedule C, then special rules apply for determining income.

MINIMUM OIC REQUIREMENTS

In order to be considered for an OIC, a taxpayer must not be a debtor in a bankruptcy case. The taxpayer must also submit:

1. The \$150 application fee, a signed Form 656, and either
2. 20% of the lump-sum offer, or
3. The first installment payment on a periodic payment offer.

APPLICATION FEES

A taxpayer must usually submit a \$150 application fee with each Form 656. There are two exceptions to this requirement:

1. No application fee is required if the offer is based solely on doubt as to liability. Previously, the “doubt as to liability” assertion was submitted on the Form 656. However, as of February 2007, this type of offer is submitted on Form 656-L, *Doubt as to Liability*.
2. The application fee is not required and payment does not apply to individuals whose income falls at or below certain levels based on the IRS OIC Monthly Low Income Guidelines.

OIC COMPLIANCE TEST

Individual taxpayers (including out-of-business sole proprietorships) attempting to secure an OIC are required to file all delinquent tax returns and remit any required estimated tax payments owed. If during the OIC investigation or processing the IRS determines that tax returns are not filed or estimated taxes are not current, taxpayers are provided 30 days to file the delinquent returns and/or make the required payments. Failure to comply results in the offer being returned to the taxpayer. In addition, the IRS retains the \$150 application fee as well as any payments made with the offer.

Business entities must also meet the compliance test for OIC consideration. The IRS requires operating businesses to be current with quarterly federal tax deposits and/or estimated tax payments before an offer is considered. Failure to remain in compliance while the offer is being investigated results in return of the offer.

The IRS is cautious about forgiving the tax debts of operating businesses. Such a tax advantage may create an appearance that the delinquent business profited from its failure to pay, and gave it an advantage over other, fully compliant businesses.

ACCEPTANCE OF THE OIC

There are two conditions whereby the IRS may accept an OIC from the taxpayer:

1. **Doubt that the Amount Owed is Collectible.** Doubt exists that the taxpayer can ever pay the full amount owed.
2. **Effective Tax Administration (ETA).** The IRS may accept an OIC when a taxpayer has the ability to pay a tax deficiency in full, but due to exceptional circumstances, requiring full payment would create an economic hardship or would be unfair and inequitable.

LIABILITIES

Offers submitted based on doubt as to collectability (DATC) or effective tax administration (ETA) must include all unpaid tax liabilities and periods for which the taxpayer is liable.

Example 3. Ron submits an offer in compromise for his income tax liabilities. Ron is also responsible for business liabilities for his sole proprietorship. Both the income tax liabilities and the business liabilities must be included in the offer.

If an OIC is submitted without including all outstanding liabilities, the IRS sends the taxpayer an amended offer that includes all outstanding liabilities.

UNASSESSED LIABILITIES

Taxpayers may submit an OIC that includes unpaid taxes that have not been assessed but are associated with filed returns only if the offer also includes other assessed liabilities. If the offer is for unassessed liabilities only, the IRS will return the OIC and retain the application fee. Note, however, that all of the taxes must be assessed before the OIC can be accepted.

NONTAX LIABILITIES

IRC §6305 authorizes the Secretary of the Treasury, via the IRS, to assess and collect child support obligations on behalf of the Secretary of Health and Human Services. The IRS is not authorized to compromise, debate, or in any other manner change the fact or amount of these child support liabilities. If the taxpayer disputes the fact or amount of the liability, he may seek legal, equitable, or administrative action in state court or before a state agency to determine the correct liability or to recover an amount erroneously collected under §6305.

FEDERAL TAX LIENS

If there is a notice of federal tax lien on record prior to submission of the OIC, the lien cannot be released until the terms of the OIC are satisfied or until the liability is paid, whichever comes first. The IRS may file a federal tax lien at anytime during the investigation of the OIC.

CONDITIONS OF AN ACCEPTED OFFER

Taxpayers must remain in full compliance with all return filings and payments of all required taxes for a period of five years or until the OIC amount is paid in full, whichever is longer. If the taxpayer fails to remain compliant with all required future filings and payments after the OIC is accepted, then he is considered in default of the OIC provisions. OIC default results in the reinstatement of the full tax liability.

REFUNDS

The IRS retains any refund, including interest, owed to the OIC taxpayer that is associated with tax periods extending through the calendar year that the IRS accepts the OIC. These IRS retained refunds are classified as additional consideration beyond the amount of the offer. This condition does not apply if the offer is based on doubt as to liability.

FINANCIAL ANALYSIS

The IRS reviews taxpayer financial information available through internal sources and requests that the taxpayer furnish any additional information necessary to determine reasonable collection potential (RCP).

The IRS uses the RCP to measure the taxpayer's ability to pay. In most cases, the IRS does not accept an OIC unless the amount offered by the taxpayer is equal to or greater than the RCP. The RCP includes values that can be realized from the taxpayer's assets, such as real property, automobiles, and bank accounts. In addition to property, the RCP also includes anticipated future income reduced by amounts allowed for basic living expense.

EQUITY IN ASSETS

Obviously, proper asset valuation is essential in determining RCP.⁶ Taxpayer assets are valued at net realizable equity (NRE).⁷ Listed below are descriptions of 12 common assets held by taxpayers along with IRS rules for determining NRE.

1. Cash

The IRS requires taxpayers to submit their last three bank statements. IRS collection personnel average the lowest daily ending balance on each of the three statements, and use that amount as an asset for purposes of computing the RCP.⁸

2. Securities

Financial securities are considered assets, and their values are determined and included in the RCP calculation. If a taxpayer liquidates an investment to fund an OIC, the IRS takes into account any penalty for early withdrawal and the related current year tax consequence of such.⁹

⁶ IRM 5.8.5.3

⁷ IRM 5.8.5.3.1

⁸ IRM 5.8.5.3.5

⁹ IRM 5.8.5.3.6

3. Life Insurance

The IRS considers the following life insurance rights as assets in computing the RCP:

- Equity in the cash surrender value
- Equity in the cash loan value less any prior policy loans or automatic premium loans required to keep the contract in force¹⁰

4. Retirement or Profit Sharing Plans

Funds held in retirement or profit sharing plans are considered RCP assets and are valued for OIC purposes.¹¹ Furthermore, contributions to voluntary retirement plans are not considered a necessary expense.

In determining value of a taxpayer's pension and/or profit sharing plan, the following criteria are considered:

- **If the account is an individual retirement account (IRA), 401(k), or Keogh account**, the IRS considers the equity in the cash value, less any expenses for liquidating the account and early withdrawal penalty.
- **If the contribution to a retirement plan is required as a condition of employment**, the IRS considers equity as the amount that the taxpayer can withdraw or borrow less any expense associated with the withdrawal.
- **If the plan cannot be borrowed against or liquidated until separation from employment**, the IRS considers the plan as having no equity as long as the taxpayer is not eligible to retire until after the period for which the IRS calculates future income.

5. Furniture, Fixtures, and Personal Effects

Generally, the IRS accepts taxpayers' declared value of household goods unless items of extraordinary value are present (e.g. antiques, artwork, jewelry).¹²

It should be noted that there is a statutory exemption from levy in accordance with IRC §6634 (a)(2) that applies to individual taxpayers' furniture and personal effects. The exemption amount is \$7,720 (updated annually).

6. Motor Vehicles, Airplanes, and Boats

Equity in motor vehicles, airplanes, and boats must be determined and included as RCP assets. The IRS accepts a taxpayer's stated value for a motor vehicle as long as the value appears reasonable. Usually, the IRS discounts the retail vehicle to 80% to arrive at a quick sale value (QSV). Unusual assets such as airplanes and boats may require an appraisal to determine FMV.

Example 4. A motor vehicle has an FMV of \$5,000. QSV is \$4,000 ($\$5,000 \times .80$), less any encumbrances.

7. Real Estate

Generally, once the FMV of real estate is established, the IRS reduces the FMV amount by 20% for RCP purposes. Therefore, if the FMV of a taxpayer's home is \$100,000, the IRS would consider QSV to be \$80,000 (less any encumbrances that are prior to the IRS lien).¹³

8. Accounts and Notes Receivable

Accounts receivable are considered RCP assets unless a determination is made to treat them as part of the income stream. Receivables are considered part of an income stream if liquidation of the receivables would prove to be detrimental to the continued operation of the business.¹⁴

¹⁰ IRM 5.8.5.3.7

¹¹ IRM 5.8.5.3.8

¹² IRM 5.8.5.3.9

¹³ IRM 5.8.5.3.11

¹⁴ IRM 5.8.5.3.12

If the accounts receivable are pledged as collateral, the IRS must apply the provisions of IRC §6323(c) to determine the federal tax lien priority of commercial transactions and financing agreements. The IRS may use accounts receivables as assets when they are from officers, stockholders, or relatives of the business.

9. Inventory, Machinery, and Equipment

A determination must be made whether the inventory, machinery, and/or equipment is secured as collateral. The IRS must apply the provisions of IRC §6323(c) to determine the federal tax lien priority of commercial transactions and financing agreements.¹⁵ Trades or businesses, not including corporations, are allowed an exemption from levy in accordance with IRC §6334(a)(3). The exemption amount currently is \$3,860 and is updated annually. The exemption generally does not apply to vehicles.

DISSIPATION OF ASSETS

If, during the investigation of an OIC, it is discovered that assets were sold, gifted, transferred, or spent on nonpriority items/debts, and are no longer available, the IRS must address whether the value of the assets, or a portion of the value, should be included in an acceptable offer amount.¹⁶ If the IRS determines that the taxpayer disregarded an outstanding tax liability when assets were dissipated, then the entire value of the related assets can be included in the RCP calculation. Examples of dissipation include:

1. Dissolving an IRA to pay unsecured creditors,
2. Selling real estate and gifting the proceeds to a family member, and
3. Refinancing equity in property and using the funds to pay unsecured debts.

However, if the taxpayer can show that the assets were dissipated to provide for necessary living expenses, the amount is not included in the RCP calculation.

FUTURE INCOME

Future income is an estimate of a taxpayer's ability to pay a tax deficiency based on an analysis of gross income less necessary living expenses for a specific number of months into the future. The number of future months used depends on the payment terms of the offer.¹⁷ For lump-sum offers, the IRS projects the future income amount by 48 months. Short-term deferred offers (6–12 months) project the future income amount by 60 months. Deferred periodic payment offers project the future income over the remaining months on the collection statute.

Example 5. A taxpayer has seven years remaining on the collection statute. The future income amount is the total estimated monthly amount multiplied by 84 months.

Example 6. The IRS determines that the taxpayer's monthly income exceeds his necessary expenses by \$300. For a lump-sum offer, his future income is calculated to be \$14,400 ($\300×48 months).

Example 7. Using the same facts as **Example 6**, a periodic payment offer over 12 months provides for \$18,000 of future income ($\$300 \times 60$ months).

Example 8. Using the same facts as **Example 6**, a periodic payment offer over the remaining months on the statute is as follows: If a taxpayer has seven years left on the statute of limitations, future income would total \$25,200 ($\300×84 months).

¹⁵ IRM 5.8.5.3.13

¹⁶ IRM 5.8.5.4

¹⁷ IRM 5.8.5.5.5

ALLOWABLE EXPENSES

Allowable expenses are those that are necessary for the production of income and for the health and welfare of the taxpayer. The IRS utilizes established national and local standards for determining allowable expenses, which provides a method for computing a taxpayer's basic living expenses.¹⁸

It is uncommon for the IRS to deviate from the national and local standards. However, reasonable exceptions to deviate from the standards occur from time to time. For example, a taxpayer with a physical disability or an unusually large family that requires housing costs outside the parameters anticipated by the local standards might justify a deviation.

More information about the national standards is available on the IRS website.

CONDITIONAL EXPENSES

The following investments are considered discretionary in nature and are not allowed as expenses for determining basic living needs:

- Payroll savings plans
- Whole life policies
- Mutual funds
- Voluntary retirement contributions

Expenses are allowed for repayment of any loans, secured by taxpayer assets, taken out for purposes of funding an OIC. Also, repayment of the taxpayer's higher education student loans, secured by the federal government is allowed as an expense as long as payments are actually made. Likewise, actual child support payments are considered allowable expenses.

Charitable contributions are generally not allowed as expenses unless they are made as a condition of employment (e.g. church minister).

SHARED EXPENSES

It can be challenging to determine allowable expenses for offers submitted by taxpayers who share living expenses with a person who is not liable for the tax deficiency. Regardless of community property laws, IRS policy is to secure sufficient information concerning the person who is not liable to determine the liable taxpayer's proportionate share of total household income and expenses.¹⁹ The following steps are taken to determine the taxpayer's pro rata share of income and expenses:

- Determine total actual household income and expenses.
- Determine what percentage of total household income the taxpayer contributes.
- Determine the necessary and allowable expense.
- Determine which expenses are shared, and which expenses are the sole responsibility of the taxpayer.
- Apply the taxpayer's percentage of income to the allowable shared expenses.

Example 9. Two taxpayers live together. Each contributes approximately 50% of total household income and each is responsible for 50% of expenses. Only one of the taxpayers is liable for a tax deficiency. The IRS determined total allowable household expenses to be \$4,000 and total household income to be \$8,000. Therefore, the liable taxpayer has an income of \$4,000, less \$2,000 of allowable expenses, providing monthly future income of \$2,000.

¹⁸ IRM 5.8.5.5.1

¹⁹ IRM 5.8.5.5.4

TAXES AS AN EXPENSE

Taxpayers are allowed a tax expense for purposes of determining their ability to pay on an OIC. In figuring the allowable tax expense, the IRS simply uses the federal, state, and FICA withholdings shown on the Form W-2 (or prior year tax return). If the taxpayer is self-employed, the prior year state and federal tax returns are used to determine the allowable tax expense.

OFFER ACCEPTANCE

If an OIC is accepted, the IRS notifies the taxpayer by mail. If the taxpayer fails to abide by all the terms and conditions of the OIC, or if the taxpayer becomes delinquent again, the IRS may determine that the OIC is in default. To avoid default, the taxpayer must file all required tax returns and pay all taxes in a timely manner for a period of five years or until the OIC amount is paid in full, whichever is longer. Ramifications of an OIC default are severe, as the agreement is considered terminated and the IRS may then collect the amounts originally owed, plus penalties and interest.

REJECTED AND RETURNED OFFERS

Taxpayers are notified by mail if their OIC is rejected. The rejection letter explains the reason for denial and provides detailed instructions regarding how to appeal the decision.

In some cases, OICs are returned, rather than rejected, because the taxpayer failed to submit required information, filed for bankruptcy, failed to file required tax returns, or failed to pay current tax liabilities while the offer was under consideration. Taxpayers do not have a right to appeal the IRS's decision to return an offer.

APPEAL OF A REJECTED OFFER

Taxpayers who receive OIC rejection letters are granted 30 days to request an appeal of the decision. Taxpayers can request an appeals conference via Form 13711, *Request of Appeal of Offer in Compromise*, or by preparing a separate letter with the following information:

- Name, address, SSN, and daytime telephone number;
- A statement explaining that the taxpayer wants to appeal the IRS findings to the appeals office;
- A copy of the rejection letter;
- Tax periods or years involved;
- Facts that support the taxpayer's position on any disagreed issue; and
- Any law or authority that the taxpayer is relying on.

It is important that the protest letter be signed and that it include a statement that the facts listed are true under the penalties of perjury.

Taxpayers can have legitimate reasons for requesting an OIC appeal including, but not limited to, the following:

- The current income listed is no longer accurate, or some other significant financial change occurred since the OIC was originally submitted.
- The IRS overstated the FMV of the assets.
- The IRS incorrectly computed an IRA current balance by failing to reduce the current value by the 10% early withdrawal penalty.

Taxpayers should compare the figures that the IRS used to reject the offer to what was originally submitted on the Forms 433. The rejection letter should include important tables used to evaluate the OIC: asset/equity tables and income/expenses tables. If the tables are not included with the rejection letter, they can be obtained by contacting the person whose name appears on the letter.

NEW FILING REQUIREMENTS FOR NONPROFIT ENTITIES

The enactment of the Pension Protection Act of 2006 (PPA) resulted in substantial charitable reform. While the vast majority of publicity and debate surrounding the PPA was focused on pension restructuring, congressional leaders managed to include significant provisions into the bill related to nonprofit organizations. Although the PPA changed numerous areas related to tax-exempt entities, this section concentrates on the new filing requirement for nearly all nonprofit entities. The new filing requirement represents one more step toward the IRS's goal of obtaining more accurate and useful information and greater transparency within the private sector.

Beginning in 2008, most small tax-exempt organizations will be required to file a new annual information return. Normally, small tax-exempt organizations (those with annual gross receipts of \$25,000 or less) are not required to file Form 990, *Return of Organization Exempt from Income Tax*, or Form 990-EZ, *Short Form Return of Organization Exempt from Income Tax*. However, the majority of these small nonprofit entities will now be required to file a new Form 990-N, *Electronic Notice for Tax-Exempt Organizations not Required To File Form 990 or 990-EZ* (also known as the e-postcard). This filing requirement applies to tax periods beginning after December 31, 2006.

There are some exceptions to the mandatory 990-N provisions. The following entities **are not required to file** the form:

1. Organizations that are included in a group return
2. Private foundations required to file Form 990-PF
3. Section 509(a)(3) supporting organizations required to file Form 990 or Form 990-EZ
4. Churches and their integrated auxiliaries
5. Conventions or associations of churches

The e-postcard is due by the 15th day of the 5th month after the close of the entity's tax year. For calendar-year organizations, the first e-postcard will be due on May 15, 2008. The following information is solicited on the Form 990-N:

1. Organization name,
2. Any other name used by the organization,
3. Organization's mailing address,
4. Organization's website address (if applicable),
5. Organization's employer identification number (EIN),
6. Name and address of principal officer,
7. Organization's annual tax period,
8. A statement that the organization's annual gross receipts are normally \$25,000 or less, and
9. An indication that the organization is going out of business (if applicable).

As the e-postcard name suggests, the Form 990-N must be filed electronically. No paper form will be made available. In an effort to reduce as much taxpayer burden as possible, the IRS attempted to make the Internet-based filing processes as friendly as feasible. Since the Internet is the delivery source, organizations should not need to purchase any additional software to file the e-postcard. Responsible individuals can go to places such as a local library to file if the organization is without a computer.

The IRS began mailing Form 990-N educational letters in July 2007. The letters put the affected small tax-exempt organizations on notice that they may be required to file the e-postcard. If organization personnel believe the IRS does not have the correct current mailing address for the tax-exempt entity, a Form 8822, *Change of Address*, should be completed and filed. The form can be accessed on the IRS website.

The PPA requires the IRS to **revoke** the tax-exempt status of any organization that fails to meet its annual filing requirement for **three** consecutive years. Therefore, organizations that do not file the e-postcard, or an information return Form 990 or 990-EZ (small organizations can elect to file the Form 990 even though not required to do so) for three consecutive years, will have their tax-exempt status revoked as of the filing due date of the third year. Organizations can apply for a retroactive reinstatement of exempt status; however, a user fee will be charged, and an explanation must be provided to show that there was reasonable cause for not filing the Form 990-N.

For the latest information about the new filing requirements, and other exempt organization information, taxpayers can sign up for the exempt organizations' *EO Update*. *EO Update* is a regular e-mail newsletter that highlights new information posted to the charities pages of **www.irs.gov**. Taxpayers can subscribe by going to **www.irs.gov/eo** and clicking on "EO Newsletter." Or, interested persons can call IRS customer service at 1-877-829-5500.

TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION

As a result of the widespread renovation attributed to the Restructuring and Reform Act of 1998, Congress created the Treasury Inspector General for Tax Administration (TIGTA). Organizationally placed within the Department of Treasury but separate from the IRS and the Office of Inspector General, TIGTA assumed most of the responsibilities of the IRS' former Inspection Service by providing independent oversight of IRS activities.

Annually, the IRS assists over 130 million taxpayers, processes more than 200 million returns, issues over 90 million refunds, and collects over \$1.7 trillion to fund the federal government. TIGTA's mission is to assist the IRS in meeting these challenges by ensuring the economy, efficiency, and effectiveness in the administration of the Internal Revenue laws. TIGTA is also charged with the duty of preventing and detecting fraud, waste, and abuse through comprehensive audit and investigative programs to improve IRS operations.

Consisting mainly of auditors and investigators who are committed to serving the public, TIGTA conducts a variety of audits and investigations that are geared toward all aspects of tax administration. TIGTA activities are designed to:

- Promote economy, efficiency, and effectiveness in administering the nation's tax system;
- Detect and deter fraud and abuse in IRS programs and operations;
- Protect IRS against external attempts to corrupt or threaten its employees;
- Review and make recommendations about existing and proposed legislation, regulations related to the IRS, and TIGTA programs and operations;
- Prevent fraud, abuse, and deficiencies in IRS programs and operations; and
- Inform the Secretary of the Treasury and Congress of problems and progress made to resolve them.

TIGTA is essentially divided into two main functional areas: the Office of Audit and the Office of Investigation.

Office of Audit (OA)

The OA evaluates IRS programs, activities, and functions to ensure resources are expended to reduce vulnerabilities in the nation's tax system. The TIGTA audit program is comprised of reviews mandated by statute or regulations, as well as reviews identified through an audit planning and evaluation process. The TIGTA audit program is presented in an annual audit plan published at the beginning of each fiscal year. Interested persons can view the prior year audit plans by visiting the TIGTA website at **www.treas.gov/tigta**.

Office of Investigation (OI)

Generally, OI is responsible for investigating criminal misconduct and serious administrative misconduct by employees of the IRS and related entities. Misconduct includes bribery, embezzlement, unauthorized access to and use or disclosure of tax information, conflict of interest, and violations of taxpayer rights. OI completes its mission through proactive and reactive investigative programs that include investigations, operations, and studies.

Reporting Misconduct

Any taxpayer who has reason to believe that a violation occurred that impacts the integrity of the federal tax administration and/or an IRS program can inform TIGTA directly. Taxpayers are encouraged to notify TIGTA of the following situations:

1. IRS employee misconduct;
2. False claims and/or fraud by outside contractors attempting to defraud the IRS by utilizing deceptive contract methods;
3. Identity theft where any individual(s) impersonated the IRS or an IRS employee or used words, letters, symbols, or IRS emblems to illegally obtain personal, confidential, or private financial information;
4. Attempts by taxpayers to bribe IRS personnel;
5. Assaults and/or threats by taxpayers against IRS employees;
6. Schemes involving the use of computer technology or mail that impersonate the IRS or IRS personnel; and
7. Misconduct by tax practitioners (falsification of qualifications, theft of IRS tax remittances, and theft of IRS tax refunds).

OI operates a toll-free hotline (1-800-366-4484) so that anyone can anonymously report allegations of fraud, waste, abuse, or mismanagement in IRS programs and operations. Allegations can also be made by fax (202-927-7018) or by mail to:

Treasury Inspector General for Tax Administration Hotline
PO Box 589
Ben Franklin Station
Washington, DC 20044-0589

Complaints are also accepted via an online form located on the TIGTA website (www.treas.gov/tigta) and email. However, TIGTA will not guarantee confidentiality if either of these methods are used.

IRS ADVISORY GROUPS

IRS ADVISORY COUNCIL

Established in 1953 under the Federal Advisory Committee Act, the first advisory group to the Commissioner of Internal Revenue was known as the Commissioner's Advisory Group (CAG). The CAG's role was that of a national policy and issue advisory committee. Consistent with the Restructuring and Reform Act of 1998, former IRS Commissioner Charles Rossotti refocused the IRS to provide top quality taxpayer service. Toward that goal, the CAG was renamed as the Internal Revenue Service Advisory Counsel (IRSAC) to more accurately reflect the agency-wide scope of its focus as an advisory body to the entire agency. The IRSAC's primary purpose is to provide an organized public forum for senior IRS executives and representatives of the public to discuss relevant tax administration issues. As an advisory body designed to focus on broad policy matters rather than narrow technical issues, the IRSAC reviews existing tax policy and recommends policies for emerging tax administration issues. The IRSAC suggests operational improvements; offers constructive observations regarding current and proposed IRS policies, programs, and procedures; and advises the commissioner about issues having substantive effects on federal tax administration.

The IRSAC is comprised of up to 30 individuals who bring substantial, disparate experience and diverse backgrounds to the council's activities. Membership is balanced to include representation from the taxpaying public, the tax professional community, small and large businesses, state tax administration, and the payroll community. Members include accountants, tax attorneys, enrolled agents, tax return preparers, academics, and tax business owners. In order to serve a three-year term on the IRSAC, nominees are required to submit an application, undergo a tax filing check, and submit to a general background check and a practitioner check (if applicable). Each year, approximately one-third of the membership terms expire, requiring a constant nomination process.

The IRSAC is organized into three separate and distinct subgroups, comprised of three of the four IRS operating divisions: the Large and Mid-Size Business Subgroup (LMSB); the Small Business/Self Employed Subgroup (SB/SE); and the Wage and Investment Subgroup (W&I). Each year, the different subgroups concentrate on current and/or emerging issues deemed to be important to the IRS and to taxpayers. Issues that are addressed in any given year are identified by both the IRS and individual IRSAC members. Each year, the IRSAC presents their annual findings and recommendations to the commissioner at a public meeting. In 2006, the IRSAC provided recommendations on the following issues (among others): earned income tax credit, volunteer income tax assistance training, tax shelters, modernized e-file, tax gap, and customer satisfaction.

The IRSAC members meet in Washington, D.C., approximately five times per year for two days each session. Members are not paid for their services. However, travel expenses (airfare, lodging, per diem, etc.) for working sessions, public meetings and orientation sessions, are reimbursed within prescribed federal travel limitations.

Additional information about the IRSAC can be obtained on the IRS website or by contacting:

Internal Revenue Service
National Public Liaison
Liaison and Tax Forum Branch
CL:NPL:LTF, Room 7567 IR
1111 Constitution Ave., NW
Washington, D.C. 20224

INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE

The Omnibus Budget Reconciliation Act of 1989 indicated that the IRS should consider "the creation of an advisory group of representatives from the payer community and practitioners interested in the information reporting program to discuss improvements to the system." In response to that recommendation, the IRS established a federal advisory committee in 1991, known as the Information Reporting Program Advisory Committee (IRPAC).

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Congress believed that an advisory group would help discuss “problems and the feasibility of complying with, or the economic impact of, rules and regulations affecting the reporting industry.” Since the very beginning, the IRPAC has worked closely with the IRS to provide advice on a wide variety of issues intended to improve the information reporting program and achieve fair and equitable treatment for all taxpayers. The IRPAC is administered by the IRS National Public Liaison Office under the direction of the Chief of Communications and Liaison. The National Public Liaison provides administrative support and direction to the IRPAC.

The primary mission of the IRPAC is to provide a public forum for the IRS and members of the private sector information reporting community to discuss relevant current and emerging information reporting issues. Based on the public forums, the IRPAC advises the IRS on the information reporting issues of mutual concern to the private sector and the federal government. The IRPAC findings and recommendations are submitted annually to the IRS Commissioner via a final report. The published report from 2006 covers a wide variety of significant issues ranging from electronic tax administration, to Internet auction sales initiatives, to the complexity of the employment tax reporting system.

The IRPAC is composed of 23 members who represent various segments of the information reporting community such as major national professional and trade associations and state tax agencies. The IRPAC is divided into four subcommittees that align with the IRS operating divisions: Large and Mid-Size Business (LMSB), Small Business/Self Employed (SB/SE), Tax Exempt and Government Entities (TEGE), and the Wage and Investment (W&I). The IRPAC members serve a three-year term and nominees are required to submit an application, undergo a tax filing check, submit to a general background check and a practitioner check (if applicable). The IRPAC members meet in Washington, D.C., approximately five times per year for two days each session. Members are not paid for their services. However, travel expenses for working sessions, public meetings, and orientation sessions are reimbursed within prescribed federal travel limitations.

Additional information about the IRPAC can be obtained on the IRS website, or by e-mail at public_liaison@irs.gov. Also, interested individuals may contact the following individual for information about the IRPAC nomination process:

Internal Revenue Service
Office of National Public Liaison
Stakeholder Relationship Management Branch
CL:NPL, Room 7566, IR
1111 Constitution Ave., NW
Washington, DC 20224

IRS BANK SECRECY ACT EXAMINATIONS

The Bank Secrecy Act (BSA) was passed in 1970 and, over the years, has been supplemented by other legislation. Most recently, the Patriot Act of 2001 strengthened BSA law. As a result, the Financial Crimes Enforcement Network (FinCEN), with the help of the IRS, has made BSA enforcement a higher priority each year. To that end, the IRS has increased the number of revenue agents performing compliance reviews under the BSA. In the fiscal year ending September 30, 2006, the number of agents assigned to BSA groups doubled in most territories. Even more new hires were planned for fiscal year 2007 as the IRS increases its efforts to detect potential money laundering, terrorist financing, and other illegal activity.

The BSA revenue agent’s job consists of two different types of compliance reviews:

1. Title 31 compliance reviews focus on money service businesses.
2. Form 8300, *Report of Cash Payments Over \$10,000 Received in a Trade or Business*, compliance reviews are governed by Internal Revenue Code (Title 26) §6050I.

The objective of both types of compliance reviews focuses on tracking the movement of large sums of money. BSA compliance reviews conducted by the IRS are **not** income tax examinations; however, the reviews can result in income tax audit referrals for the entity and/or customers of the entity.

The compliance reviews attempt to detect money laundering or other illegal activity, either from a business or from customer transactions at a business. Money laundering involves three stages:

1. **Placement.** Placing illegal money into the retail economy.
2. **Layering.** Separating illegal money from its criminal source by “layering” it through a series of financial transactions, making it difficult to trace the money back to the original illegal source.
3. **Integration.** Moving proceeds into a legitimate form by purchasing a large ticket item such as an automobile, jewelry, coins, real estate, or travel packages.

Money laundering hides the source of illegal cash so that money can be used without knowing the criminal source. Money can be laundered by purchasing money orders, traveler’s checks, or stored value cards, or by wire transfers to another person in a different state or country. The transactions occur at banks and other money service businesses (MSB). The BSA regulations are issued and administered by FinCEN. The IRS BSA revenue agents conduct compliance reviews and make referrals to FinCEN or the IRS criminal investigation division, as appropriate.

BSA regulations under Title 31 include a host of requirements for MSBs:

1. Register as an MSB.
2. Maintain a list of agents.
3. File suspicious activity reports.
4. Develop and implement an anti-money laundering compliance program.
5. File currency transaction reports.
6. Maintain monetary instrument logs.
7. Maintain certain information for funds transfers and currency exchange.
8. Retain records for five years.

TITLE 31 COMPLIANCE REVIEWS

The BSA revenue agent performs compliance reviews at various MSBs. A business is considered an MSB if either of the following scenarios is true:

1. Money transfer services (wire transfers) are offered in any amount, or
2. The business conducts more than \$1,000 in business activity with the same person on the same day, using any of the following services:
 - Money orders
 - Traveler’s checks
 - Check cashing
 - Currency dealing or exchange
 - Stored value (such as prepaid phone cards or debit cards)

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Example 10. John's Liquor Store cashes payroll checks for customers. Some of those checks exceed \$1,000. John's Liquor Store is classified as an MSB and is required to register as such.

Example 11. Jill's Finer Foods is a grocery store that cashes payroll checks and personal checks for customers. However, the check cashing policy strictly limits checks to \$25 over the amount of purchase, not to exceed \$500 in a day. The grocery store is not considered an MSB.

Example 12. Jill decides to start a wire transfer service at the grocery store so her customers can wire money to relatives and other individuals. The store now qualifies as an MSB.

If a BSA revenue agent uncovers a violation during an MSB compliance review, civil and/or criminal penalties can be assessed. Many violations result in the issuance of Letter 1112, *Title 31 Violation Notification*. The letter serves to report BSA violations; it is signed by the MSB owner or compliance officer acknowledging the violation. The letter also sets forth a plan to correct the violations. Where more severe BSA violations are caught, fines are assessed. An MSB that commits a negligent violation can be assessed a civil penalty of up to \$500. If a willful violation is found, the civil penalty assessed is the greater of \$25,000 or the amount involved in the transaction. The maximum criminal penalty is a fine of up to \$500,000 and/or a prison term of up to 10 years.

Example 13. JB, a BSA revenue agent, conducted a compliance review and found a few violations. This is the business's first review, and the violations were not determined to be negligent or willful. JB educates the business owner about the BSA regulations and issues the Letter 1112.

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For Example 13

Internal Revenue Service
Small Business/Self-Employed Division
1 Tax Center Road
Downer's Grove, IL 00000-0000

Department of the Treasury

Person to Contact:
JB
Employee Identification Number:
00-00000
Contact Telephone Number:
(000) 000-0000

Date: August 16, 2007

Chapter 8 Example 13 Liquors

1234 Money Services Business Avenue
Chicago, IL 60604
Attn: Simon Barsinister, President

Dear Mr. Barsinister,

During our recent Bank Secrecy Act (BSA) compliance examination of Chapter 8 Example 13 Liquors we identified apparent weaknesses or deficiencies related to, or violations of, the BSA. (31 U.S.C. 5311 et seq., or its implementing regulations, 31 C.F.R. Part 103.)

Enclosed is Form 13726, *Summary of Examination Findings and Recommendations*, regarding the identified weaknesses, deficiencies or violations. If you accept our findings and any accompanying recommendations, and agree to implement the appropriate corrective action(s) in a timely manner, please sign the enclosed Form 13727, *Acceptance Statement*. In addition, prepare a written explanation of why the violations, if any, occurred and a statement indicating what corrective action you will take. Please return these documents to:

Internal Revenue Service
1 Tax Center Road
Downer's Grove, IL 00000-0000
Attn: JB 00-00000

Please provide any BSA delinquent or amended forms to the examiner.

If you disagree with our findings or recommendations, please send us a written explanation detailing your position to the above address within 30 days of the date of this letter.

Letter 1112 (Rev. 7-2007)
Catalog Number 40525K

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For Example 13

We must advise you that a copy of this report is required to be forwarded to the Financial Crimes Enforcement Network (FinCEN). FinCEN will determine if penalties under the BSA are to be asserted.

If you have any questions, please contact the person whose name and telephone number are shown above.

Thank you for your cooperation.

Sincerely yours,

JBs Boss
BSA Group Manager

Enclosures:
Form 13726
Form 13727

Letter 1112 (Rev. 7-2007)
Catalog Number 40525K

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For Example 13

Explanation of Apparent Violations Regulations and Recommendations

31 CFR 103.125:

Each money services business shall develop, implement, and maintain an effective anti-money laundering program. The program shall be commensurate with the risks posed by the location and size of, and the nature and volume of the financial services provided by the money services business. An effective program is one that is reasonably designed to prevent the money services business from being used to facilitate money laundering and the financing of terrorist activities. The program must be in writing and available to the Department of the Treasury upon request. At a minimum the program shall have policies, procedures and internal controls to ensure compliance, a designated Compliance Officer, training of personnel, and an independent review. Each money services business shall remain solely responsible for implementation of the requirements set forth in this section.

31 CFR 103.41 (b):

The initial registration period expires at the end of the two-calendar-year period beginning with the calendar year in which the money services business is first required to be registered. The registration must be renewed on or before December 31 of the year the initial registration period ends and every two years thereafter. A copy of the registration renewal must be retained for the period specified in § 103.38(d).

Your initial registration was filed on August 25, 2005. That registration was effective for the calendar years 2005 and 2006. The registration renewal signed today is effective for the calendar years 2007 and 2008. Another registration renewal FinCEN Form 107 (available at www.fincen.gov or www.msb.gov) should be filed by December 31, 2008 and would be effective for calendar years 2009 and 2010.

31 CFR 103.22

Financial institutions are required to file a Currency Transaction Report on each deposit, withdrawal, exchange of currency or other payment or transfer, by, through, or to such financial institution which involves a transaction in currency of more than \$10,000. Multiple currency transactions shall be treated as a single transaction if the financial institution has knowledge that they are by or on behalf of any person and result in either cash in or cash out totaling more than \$10,000 during any one business day.

31 CFR 103.27(a)

A Currency Transaction Report shall be filed by financial institutions within 15 days following the day on which the reportable transaction occurred. A copy of each report shall be retained by the financial institution for a period of five years from the date of the report.

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For Example 13

Form 13727 (July 2007)		Department of the Treasury – Internal Revenue Service Acceptance Statement	
Business name Chapter 8 Example 13 Liquors		Employer Identification Number (EIN) 36-0000000	
Business address 1234 Money Services Business Avenue		Telephone number (312) 000-0000	
City Chicago	State IL	Zip code 60604	
<p>I, _____ have received and reviewed Form 13726, <i>Summary of Examination Findings and Recommendations</i>, addressing specific areas of noncompliance with the Bank Secrecy Act recordkeeping and reporting requirements, dated <u>August 16, 2007</u>.</p> <p>I agree to follow the recommendations and to correct the Anti-Money Laundering program, reporting and recordkeeping violations.</p> <p>I will take the following specific corrective action(s) by _____.</p>			
Signature	Title	Date	
Catalog Number 48742Z		Form 13727 (7-2007)	

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Example 14. A year later, JB returns to the same entity to conduct a follow-up review. Even though the entity is now aware of the BSA regulations and acknowledged violations in the previous review, JB found similar violations. He then consults with his manager and may refer the entity to FinCEN or IRS criminal investigation for possible negligent or willful violation penalties.

REQUIREMENTS UNDER TITLE 31

Registration. Businesses that meet the definition of an MSB must register with FinCEN using FinCEN Form 107, *Registration of Money Service Business* (this form and others are available at www.fincen.gov or at www.msb.gov). Registration must occur within 180 days after the business qualifies as an MSB. A branch office or agent of an MSB does not have to file its own registration form. The registration must be renewed every two years by filing a new Form 107. The renewal must be submitted by December 31 of the second calendar year following the initial registration.

Example 15. Moe's Liquors opened for business on July 1, 2005. They offer wire transfers to their customers, and they cash payroll checks in excess of \$1,000. Moe's is required to register by December 31, 2005. He also needs to file a renewal form by December 31, 2007.

Example 16. Moe's Liquors opens a branch office in a neighboring suburb. The branch office offers the same financial services. The branch office is not required to register because it is merely an agent of the original store.

Anti-Money Laundering (AML) Compliance Program. All MSBs are required to develop and implement an AML compliance program. The program puts controls in place to assure compliance with the BSA, designate a compliance officer, provide education and training to appropriate personnel, and provide for an independent review.

Currency Transaction Reports (CTR). An MSB must file a CTR (FinCEN Form 104, *Currency Transaction Report*) for currency transactions involving more than \$10,000 cash-in or cash-out conducted by, through, or to the MSB on any one day (24-hour period) by, or on behalf of, the same person.

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Example 17. A customer enters Dollars to Donuts Currency Exchange and purchases a money order with \$11,000 of currency. The currency exchange is required to file a CTR on the transaction.

Example 18. A customer enters Dollars to Donuts Currency Exchange on a Wednesday morning and sends a wire transfer to his mother, who lives in Mexico, in the amount of \$6,000, paying with currency. He then returns to the Currency Exchange at 3 p.m. and wires \$5,000 to his uncle who lives in Guatemala. The Dollars to Donuts Currency Exchange is required to file a CTR because more than \$10,000 was paid in one 24-hour period.

Monetary Instrument Log. MSBs must maintain information related to cash sales of monetary instruments from \$3,000 to \$10,000 (e.g., money orders and travelers checks). Amounts of more than \$10,000 should be reported on a CTR.

Suspicious Activity Report (SAR). MSBs are required to file a FinCEN Form 109, *Suspicious Activity Report*, when they suspect that a transaction might be linked to illegal activity, and at least \$2,000 is involved. The SAR must be filed within 30 days of detection of the suspicious transaction. The appropriate law enforcement agency may also be contacted. If an MSB suspects that a customer transaction is linked to terrorist activity, the MSB should call the Financial Institutions Hotline immediately at 1-866-556-3974.


For purposes of the BSA, an activity is considered suspicious if it:

- Involves funds derived from illegal activity,
- Is designed to evade BSA requirements (structuring),
- Appears to serve no business or lawful purpose, or
- Involves using an MSB to facilitate a criminal activity.

Example 19. Snidely Whiplash enters a currency exchange and pays \$3,000 in cash to send a wire transfer. While completing the transaction, Snidely boasts to the teller that he got a great deal on crack cocaine that day because he purchased it for \$2,000 and then sold it for \$3,000. The currency exchange should file an SAR.

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For Example 19

FinCEN Form 109 March 31, 2007 Previous editions will not be accepted after September 30, 2007 (Formerly Form TD F 90-22.56)	Suspicious Activity Report by Money Services Business Please type or print. Always complete entire report. Items marked with an asterisk * are considered critical. (See instructions.)	 OMB No. 1506-0015
1 <input type="checkbox"/> Check this box only if amending or correcting a prior report (see item 1 instructions) 1a <input type="checkbox"/> Check this box if this is a recurring report		
Part I Subject Information 2 <input type="checkbox"/> Multiple subjects (see item instructions)		
3 Subject type (check only one box) a <input checked="" type="checkbox"/> Purchaser/sender b <input type="checkbox"/> Payee/receiver c <input type="checkbox"/> Both a & b z <input type="checkbox"/> Other		
*4 Individual's last name or entity's full name Whiplash	*5 First name Snidely	6 Middle initial B
*7 Address 230 N Wrong Path Avenue		
*8 City Chicago	*9 State I L	*10 Zip Code 6 0 6 0 0 _ _ _ _
*11 Country Code (If not US) _ _		
*12 Government issued identification (if available) a <input checked="" type="checkbox"/> Driver's license/state I.D. b <input type="checkbox"/> Passport c <input type="checkbox"/> Alien registration z <input type="checkbox"/> Other _____ e Number B 1 2 3 - 4 5 6 7 - 8 9 0 1 f Issuing state/country I L		
*13 SSN/ITIN (individual) or EIN (entity) 1 2 3 4 5 6 7 8 9	*14 Date of birth 01/05/1952	15 Telephone number (3 1 2) 5 5 5 - 5 5 5 5
Part II Suspicious Activity Information		
*16 Date or date range of suspicious activity From 08/14/2007 To 08/14/2007		*17 Total amount involved in suspicious activity a <input type="checkbox"/> Amount unknown \$ 3 0 0 0 .00
*18 Category of suspicious activity (check all that apply) a <input checked="" type="checkbox"/> Money laundering b <input type="checkbox"/> Structuring c <input type="checkbox"/> Terrorist financing z <input type="checkbox"/> Other (specify) _____		
*19 Financial services involved in the suspicious activity and character of the suspicious activity, including unusual use (check all that apply). a <input type="checkbox"/> Money order b <input type="checkbox"/> Traveler's check c <input checked="" type="checkbox"/> Money transfer z <input type="checkbox"/> Other _____ e <input type="checkbox"/> Currency exchange Check all of the following that apply (1) <input type="checkbox"/> Alters transaction to avoid completing funds transfer record or money order or traveler's check record (\$3,000 or more) (5) <input type="checkbox"/> Individual(s) using multiple or false identification documents (2) <input type="checkbox"/> Alters transaction to avoid filing CTR form (more than \$10,000) (6) <input type="checkbox"/> Two or more individuals using the similar/same identification (3) <input type="checkbox"/> Comes in frequently and purchases less than \$3,000 (7) <input type="checkbox"/> Two or more individuals working together (4) <input type="checkbox"/> Changes spelling or arrangement of name (8) <input type="checkbox"/> Same individual(s) using multiple locations over a short time period (9) <input type="checkbox"/> Offers a bribe in the form of a tip/gratuity (10) <input type="checkbox"/> Exchanges small bills for large bills or vice versa		
If mailing, send each completed SAR report to: Enterprise Computing Center - Detroit Attn: SAR-MSB P.O. Box 33117 Detroit, MI 48232-0980		A free secure e-filing system is available to file this report. Go to http://bsaefiling.fincen.treas.gov for more information and to register.

Catalog No. 49340J

(Rev. 3/07)

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For Example 19

Part II Suspicious Activity Information, Continued						2
*20 Purchases and redemptions (check box "P" for <u>purchase</u> or box "R" for <u>redemption</u>)						
Instrument	P	R	Issuers	Total Instruments	Total Amount (US Dollars)	
Money Orders:	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____	\$ _____ .00	
	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____	\$ _____ .00	
	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____	\$ _____ .00	
Traveler's Checks:	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____	\$ _____ .00	
	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____	\$ _____ .00	
	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____	\$ _____ .00	
Money Transfers	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Eastern Union	1	\$ 3,000 .00	
	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____	\$ _____ .00	
	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____	\$ _____ .00	
*21 Currency Exchanges: Tendered Currency/Instrument Country Received currency Country Amount (US Dollars)						
<input type="checkbox"/> If bulk small currency _____ \$ _____ .00						
<input type="checkbox"/> If bulk small currency _____ \$ _____ .00						
Part III Transaction Location 22 <input type="checkbox"/> Multiple transaction locations						
23 Type of business location (check only one) a <input checked="" type="checkbox"/> Selling location b <input type="checkbox"/> Paying location c <input type="checkbox"/> Both						
*24 Legal name of business Rich's Currency Exchange				25 Doing business as		
*26 Permanent address (number, street, and suite no.) 456 Eastwest Road			*27 City Carlinsville		*28 State I L	
					*29 Zip Code 6 2 0 0 0 - - - -	
*30 EIN (entity) or SSN/ITIN (individual) 3 7 1 2 3 4 5 6 7		*31 Business telephone number (2 1 7) 9 8 7 - 6 5 4 3		32 Country Code (If not US) 		33 Internal control/file number (If available)
Part IV Reporting Business 34 <input checked="" type="checkbox"/> The Reporting Business is the same as the Transaction Location (go to Part V)						
*35 Legal name of business				36 Doing business as		
*37 Permanent address (number, street, and suite no.)			*38 City		*39 State	
					*40 Zip Code - - - - -	
*41 EIN (entity) or SSN/ITIN (individual) 		*42 Business phone number (include area code) () -		43 Country Code (If not US) 		44 Internal control/file number (If available)
Part V Contact for Assistance						
*45 Designated contact office Rich Waldenbanker			*46 Designated phone number (Include area code) (2 1 7) 9 8 7 - 6 5 4 3			47 Date filed (See instructions) 08/14/2007
48 Agency (If not filed by a Money Services Business)						

For Example 19

Part VI	Suspicious Activity Information - Narrative*	3
<p>Explanation/description of suspicious activity(ies). This section of the report is <u>critical</u>. The care with which it is completed <u>may determine whether or not the described activity and its possible criminal nature are clearly understood by investigators</u>. Provide a clear, complete and chronological description of the activity, including what is unusual, irregular or suspicious about the transaction(s). Use the checklist below, <u>as a guide</u>, as you prepare your description. The description should cover the material indicated in Parts I, II and III, but the money services business (MSB) should describe any other information that it believes is necessary to better enable investigators to understand the suspicious activity being reported.</p>		
<div style="display: flex; flex-wrap: wrap;"> <div style="width: 50%;"> <p>a. Describe conduct that raised suspicion.</p> <p>b. Explain whether the transaction(s) was completed or only attempted.</p> <p>c. Describe supporting documentation and <u>retain</u> such documentation for your file for five years.</p> <p>d. Indicate a time period, if it was a factor in the suspicious transaction(s). For example, specify the time and whether it occurred during AM or PM. If the activity covers more than one day, identify the time of day when such activity occurred most frequently.</p> <p>e. Retain any admission or explanation of the transaction(s) provided by the subject(s) or other persons. Indicate when and to whom it was given.</p> <p>f. Retain any evidence of cover-up or evidence of an attempt to deceive federal or state examiners, or others.</p> <p>g. Indicate where the possible violation of law(s) took place (e.g., main office, branch, agent location, etc.).</p> <p>h. Indicate whether the suspicious activity is an isolated incident or relates to another transaction.</p> <p>i. Indicate for a foreign national any available information on subject's passport(s), visa(s), and/or identification card(s). Include date, country, city of issue, issuing authority, and nationality.</p> <p>j. Indicate whether any information has been excluded from this report; if so, state reasons.</p> <p>k. Indicate whether any U.S. or foreign instrument(s) were involved. If so, provide the amount, name of currency, and country of origin.</p> <p>l. Indicate whether any transfer of money to or from a foreign country,</p> </div> <div style="width: 50%;"> <p>or any exchanges of a foreign currency were involved. If so, identify the currency, country, and sources and destinations of money.</p> <p>m. Indicate any additional account number(s), and any foreign bank(s) account numbers which may be involved in transfer of money.</p> <p>n. Identify any employee or other individual or entity (e.g., agent) suspected of improper involvement in the transaction(s).</p> <p>o. For issuers, indicate if the endorser of money order(s) and/or traveler's check(s) is different than payee. If so, provide the individual or entity name; bank's name, city, state and country; ABA routing number; endorser's bank account number; foreign non-bank name (if any); correspondent bank name and account number (if any); etc.</p> <p>p. For selling or paying locations, indicate if there is a video recording medium or surveillance photograph of the customer.</p> <p>q. For selling or paying locations, if you do not have a record of a government issued identification document, describe the type, issuer and number of any alternate identification that is available (e.g., for a credit card specify the name of the customer and credit card number.)</p> <p>r. For selling or paying locations, describe the subject(s) if you do not have the identifying information in Part I or if multiple individuals use the same identification. Use descriptors such as male, female, age, etc.</p> <p>s. If amending a prior report, complete the form in its entirety and note the changes here in Part VI.</p> <p>t. If a law enforcement agency has been contacted, list the name of the agency and the name of any person contacted, their title, their telephone number, and when they were contacted.</p> </div> </div>		
<p><u>Supporting documentation should not be filed with this report. Maintain the information for your files.</u></p> <p>Enter the explanation/description narrative in the space below. If necessary, continue the narrative on a duplicate of this page or a blank page.</p> <p>Tips on SAR form preparation and filing are available in the SAR Activity Reviews at www.fincen.gov/pub_reports.html.</p>		
<p>Legal disclaimers will not be included in this narrative. Also, do not include charts or tables.</p> <p>Subject commented to cashier when purchasing wire transfer #W12345 for \$3,000 that he got a great deal on crack cocaine, purchasing it for \$2,000 earlier in the day and reselling it for the \$3,000 used to purchase the wire transfer.</p>		

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Example 20. Boris Badenuff goes to a liquor store to purchase \$5,000 worth of money orders. Boris knows that the liquor store must maintain a log of all money orders sold in excess of \$3,000, so he tells the store clerk that he wants two money orders for \$2,500 each, both made out to Natasha. The liquor store should file an SAR because Boris is structuring the transactions to evade BSA requirements.

Example 21. Lex Luthor tells the grocery store clerk that he wishes to purchase 15 money orders, all made out to Kryptonite, Inc., for \$1,000 each. Since it appears to serve no business or lawful purpose to send fifteen \$1,000 money orders instead of a single \$15,000 money order, the grocery store should file a SAR on this transaction.

FORM 8300 COMPLIANCE REVIEWS

Illegal money is often laundered by purchasing assets. IRC §6050I governs the reporting of cash received in a trade or business. Form 8300, *Report of Cash Payments Over \$10,000 Received in a Trade or Business*, is used to report cash payments of over \$10,000. Form 8300 must be filed if the cash over \$10,000 is received in a lump-sum or in installment payments over a rolling 12-month period of time. It can be received in a single transaction or in related transactions. Financial institutions/MSBs are required to file CTRs as discussed earlier. Casinos are required to file FinCEN Form 103, *Currency Transaction Report by Casino*, instead of Form 8300 when the casino receives over \$10,000 in currency.

Businesses that sell big ticket items (jewelry, cars, airplanes, etc.) and services (pawnbrokers, attorneys, travel agents, etc.) are likely to have a Form 8300 filing requirement.

Example 22. Harl Lee Davidson purchases a new motorcycle and pays \$12,000 in cash. The motorcycle dealer is required to file a Form 8300.

Example 23. Adam Adulterer went to a jewelry store to purchase jewelry for his mistress. Because he does not want his wife to find out, he pays the entire purchase price of \$12,000 in cash. The jewelry store is required to file a Form 8300.

Example 24. A customer purchases an automobile from Manny Lemon's Used Cars. The customer gives Manny \$3,000 in cash as a down payment and returns a week later to pay the balance of \$9,000, also in cash. Because the total cash paid in this transaction exceeds \$10,000, a Form 8300 is required.

Example 25. Manny Lemon sells another car and offers in-house financing to the customer. The customer makes \$1,000 payments each month in cash. When the eleventh payment is received, Manny is required to file a Form 8300, as the total cash received in this transaction exceeds \$10,000.

Because exempt organizations are not considered trades or businesses, they are not required to file the Form 8300 for cash charitable contributions in excess of \$10,000.

If a personal asset (such as a personal automobile) is sold, Form 8300 is not required because the sale is not in the course of a trade or business.

Cash is defined as coins, currency, cashier's checks, bank drafts, traveler's checks, or money orders in face amounts of \$10,000 or less if received in a designated reporting transaction. (Recall that amounts over \$10,000 should be reported on a CTR.) A designated reporting transaction is the retail sale of any of the following:

1. **Consumer durables.** This is defined as property other than land or buildings that is suitable for personal use, can reasonably be expected to last at least one year under ordinary use, has a sales price of more than \$10,000, and can be seen or touched.
2. **Collectibles.** This includes art, antiques, stamps, and coins.
3. **Travel or entertainment.** Such a sale must be reported if the total sales price of all items sold for the same trip or entertainment event in one transaction or related transactions is more than \$10,000.

Example 26. Manny Lemon sells an automobile from his dealership for \$13,000. Manny receives \$6,000 in cash and a \$7,000 cashier's check. Manny is required to file a Form 8300 because the total cash and cash equivalents received exceeds \$10,000.

Example 27. World Series Travel is headquartered in St. Louis. They sell a travel package to a customer for \$14,000. The customer pays with a \$14,000 cashier's check. World Series Travel is not required to file Form 8300 because the bank that originally issued the cashier's check should have filed a CTR.

Example 28. Use the same facts as **Example 27**, except the customer pays with \$5,000 cash and a \$9,000 cashier's check. In this instance, a Form 8300 is required.

Personal checks are not included as cash. In addition, cashier's checks that are proceeds from a bank loan are not considered cash.

Example 29. Heather purchases an automobile, paying \$6,000 in cash and using a \$9,000 cashier's check from Lawyers-R-Us Credit Union. At the bottom of the cashier's check, the memo entry states, "Car Loan #XXX". Since it is clear that the cashier's check is linked to a bank loan, it is not considered cash. Therefore, a Form 8300 is not required.

Example 30. Holly purchases furniture worth \$12,500. She pays for the furniture with \$5,000 cash and a personal check for \$7,500. A Form 8300 is not required.

For Form 8300 purposes, "related transactions" are those that occur between a buyer and a seller within a 24-hour period. Separate transactions are also considered related (regardless of the time involved) if it is known, or should be known, that each one is part of a series of connected transactions.

Form 8300 must be filed within 15 days after receiving the payment which gave rise to the reporting requirement. A Form 8300 can be filed for an amount less than \$10,000 if the transaction is suspicious in nature.

Example 31. Lanny goes to Centertown Travel and purchases a World Series game ticket, air, and hotel package to Chicago for \$7,000 cash. A few days later he decides that, since he may never again get to see a World Series game in Chicago, he should also purchase tickets for all his living relatives. The total package is now \$15,000. Lanny makes the additional \$8,000 payment with a cashier's check. A Form 8300 is required because the individual purchases constitute a series of connected transactions.

Example 32. The transaction in **Example 32** was completed on September 24, 2007, so a Form 8300 must be filed by October 9, 2007.

A statement must be given to each person named on the Form 8300. The statement must indicate the name and address of the business, the name and phone number of a contact person, and the total amount of reportable cash received. This statement must be sent to the buyer by January 31 of the year after the year in which the cash was received.

PENALTIES RELATED TO FORM 8300

Civil penalties can be assessed for failure to file a correct Form 8300 by the due date, as well as for failing to provide the required statement to named individuals. The penalty is \$50 per failure, as long as the requirements were not intentionally disregarded. The penalty for intentional disregard of the Form 8300 filing requirements is the larger of \$25,000 or the amount of cash received subject to reporting up to \$100,000. In addition, there are criminal penalties for willful failure to file the Form 8300, willfully filing a false or fraudulent Form 8300, and others. Criminal penalties include fines up to \$250,000 (\$500,000 for corporations) and/or five years in prison. Penalties may also apply to persons who attempt to structure a transaction in a way that makes it seem unnecessary to file Form 8300.

Example 33. On December 31, 2007, BSA revenue agent JB completed a compliance review of a jewelry store and secured three delinquent Form 8300s for transactions that occurred in 2006. Assuming there was no intentional disregard of the requirements, JB recommends the assessment of \$150 (3 at \$50 each) for failing to file correct Forms 8300, and another \$150 (3 at \$50 each) for failing to provide the required statements to the customers.

Example 34. Eighteen months later, JB conducts another Form 8300 compliance review at the same jewelry store. After being made aware of the Form 8300 requirements in the previous examination, the jewelry store intentionally disregards the requirements and willfully fails to file the required Forms 8300. JB could recommend a larger penalty for intentional disregard of the requirements or refer the jewelry store to the IRS Criminal Investigation Division.

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