



OIC Refund Offset Interim Guidance from IRS - Good News for Clients

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On October 28, 2021, the IRS issued interim guidance on refund recoupments, clarifying its revised policy for employees of the Specialty Collection Offer in Compromise (SCOIC) which is projected to encourage more taxpayers to pursue a fresh start via the offer in compromise (OIC) route. In the memorandum, the IRS (1) explains how taxpayers may retain their tax refunds upon acceptance of their OICs, and (2) permits certain taxpayers to seek a release of refunds that the IRS would otherwise use to offset taxpayer's debt.

For offers accepted on or after November 1, 2021, the IRS will no longer offset or recoup refunds for tax periods extending through the calendar year that the offer was accepted (this includes all applicable tax periods included on the OIC Form 656). Previously, the IRS would keep refunds, including interest, from taxpayers who owe for tax years through the calendar year in which an offer was accepted. However, this new policy makes clear that the IRS will continue to offset refunds related to tax years assessed prior to the acceptance of an offer.

EXAMPLE: The taxpayer has an offer accepted November 15, 2021. A tax return for calendar year 2021 is filed and assessed with a processing code May 15, 2022, in which an overpayment is shown on the return in the amount of \$1,000.00. The IRS will take no action to recoup the taxpayer's refund (overpayment) since the date of assessment is after the offer acceptance.

EXAMPLE: The taxpayer has an offer accepted November 15, 2021. The taxpayer filed a tax return for calendar year 2020 which is assessed on October 15, 2021, showing an overpayment which offset to the outstanding tax liability on October 20, 2021. Since the systemic offset took place before the offer acceptance, there was no overpayment available for refund when the offer was accepted.

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Additionally, this new policy will allow qualifying taxpayers who submitted an offer on the basis of financial hardship to request an Offset Bypass Refund (OBR). An OBR allows taxpayers in difficult financial situations to request the IRS to release their refund owed during a tax year instead of applying the refund to an outstanding tax balance. Note that the taxpayers are required to meet the criteria in the Internal Revenue Manual (IRM). Previously, an OBR was not available as a remedy for taxpayers with a pending offer in compromise.

The new IRS guidance contains an exception to its updated offset procedures so as to prevent taxpayers from attempting to game the new system. If a taxpayer and the IRS execute an offer based upon information known at the time of the settlement, and the taxpayer subsequently files an amended return requesting a refund for a year not covered by Form 656, the IRS may offset any potential refund for the taxpayer's outstanding tax debt. This is intended to prevent taxpayers from not disclosing a potential refund during OIC negotiations and waiting until after the settlement to make that information available to the IRS.

Nevertheless, the updated policies further incentivize taxpayers and practitioners to consider whether an offer in compromise is the best strategy for financial health and ongoing tax compliance. Discuss your offer in compromise options with a tax professional, contact us at (410) 497-5947, or schedule a free initial consultation with our brief contact form.

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