

*A Tax Attorney's Guide:
How to Survive the IRS*

D. Joseph Damiens, Esq.
TAX ATTORNEY

Special Bonus:
Get a Free Consultation
to
Help You Solve Your IRS Problems

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TABLE OF CONTENTS

Foreword - Who Am I?	1
Introduction - Who are you?.....	3
1 - Can I peek at the IRS's poker hand?.....	7
2 - Is the IRS ever SOL?	11
3 - What if you have unfiled returns?.....	15
4 - What if the IRS has filed returns for you?	19
5 - Okay, now we know that you owe the IRS money—so what do you do now?	21
6 - How do I know which option(s) the IRS will accept? .	23
7 - Full-pay strategies	29
8 - Installment Agreements	33
9 - Are your liabilities dischargeable in bankruptcy?.....	37
10 - Currently Not Collectible (Hardship) Status.....	41
11 - The Offer in Compromise	45
12 - Innocent Spouse Relief	49
13 - Penalty (and Associated Interest) Abatement	53
14 - Payroll Tax Problems and Solutions.....	57
15 - Tying it all together: IRS strategies	61
16 - Get back to your life.....	65



FOREWORD

WHO AM I?

Legally, I can't say that I am the best tax lawyer in the South . But I can tell you that, through my representation, hundreds just like you have found relief from the mighty hand of the Internal Revenue Service.

I'm Joseph Damiens, a local, licensed lawyer. I graduated from Mississippi State University, Starkville Mississippi, and I received my law degree from Mississippi College School of Law. I then furthered my legal education and received a master of laws (LL.M.) in taxation from the University of Alabama .

My wife, Emily, are lifelong residents of Mississippi and reside in Madison, MS our daughter, Sutton, who is three years old.

I am a licensed member of the Mississippi Bar and have practiced law since 2011 . In my first years of practice, I focused my practice on estate planning and corporate mergers & sales.

Shortly after receiving my LL.M. in 2013, I shifted my primary focus to IRS resolution work, helping small businesses and individuals deal with the IRS and other tax authorities. I am licensed by the IRS to practice in every U.S. territory. If you have an IRS-related problem, I would love to talk with you about ending it for good .

I can be reached twenty-four hours a day at 601-202-9974

Check us out on the web at www.DamiensTax.com where many of your questions will be answered, including how to go about confronting your tax problem.

INTRODUCTION

WHO ARE YOU?

The following are broad generalizations, but if you are reading this book, odds are you have found yourself in one or more of the following circumstances:

- You are an entrepreneur, small business owner, or an employee who failed to have sufficient tax withheld from your paycheck or the paycheck of your employees;
- You have one or more periods of unfiled tax returns;
- You are divorced or are facing a tax crisis as a result of your spouse's poor financial decisions;
- You have married or are about to be married and you or your spouse's poor financial decisions

in a former relationship are about to impact your marriage;

- You have just been visited by an IRS Revenue Officer or have received notice that a bank or wage levy or garnishment is about to involuntarily separate you from your money or property;
- You are carrying crippling IRS penalties and interest;
- You are motivated to end your IRS problem for good!

It's time to come to grips with the fact that you are one of nearly 30 million people in the United States today with a tax problem. Once this fact sinks in, you are ready for step one of this journey . Step one: forget *why* you are here.

Look—the tax code is really complicated. I will admit it, you can admit it, and ask any IRS collection person. They will admit it, too! The code and collection regulations change almost daily. But, here is one thing that won't change: the IRS does not care *why* you are in this mess, so you should not care either. Your only concern should be how you are going to get past it. It does not

define you. I don't know who you are, but I know who you are *not*. The simple fact that you are reading this book means that *you are not your tax problem!*

So, how, you may ask, will my life ever get back to normal? Will I ever get a good night's sleep again? Well, how long did it take for these problems to crop up in the first place? My guess is that they did not accumulate overnight. So, you should not expect them to go away overnight. The good news is that it will likely take less time for you to solve them than it took to create them. The old maxim, "How do you eat a whole elephant?" applies. The answer is, "One bite at a time!" So, let's get started.

CHAPTER 1

CAN I PEEK AT THE IRS'S POKER HAND?

You have just been contacted by an IRS Revenue Officer, or you've received some intimidating mail from the IRS, with deadlines. Maybe you haven't filed returns in years, and now you are waiting for the other shoe to drop. Do you owe them money, or do they just think you do? You ask yourself, can they come after me forever? What do they know about me?

Just so you know, the IRS is the most powerful collection agency in the United States. They are constantly acquiring and updating information about you to manage the "tax gap." (That's bureaucrat-speak for "going broke.") However, through a nifty bit of legislation—the Freedom of Information Act (FOIA)—taxpayers and their advisors have the ability to discover much of the information that the IRS compiles about citizens and their tax problems.

As with a medical problem, the first action item in solving any IRS problem is diagnosing the nature and extent of the problem. This is done by obtaining your IRS Master Tax File, called the “transcript” of your account with the IRS. Write the IRS and obtain yours immediately. Here is the address:

IRS FOIA Request
Stop 93A
P.O. Box 621506
Atlanta, GA 30362-3006

The IRS Disclosure Office, which acts as the central repository of transcripts and other data about you, is a separate division from enforcement and collection. Generally, your request for transcripts won’t raise red flags that may wake the sleeping giant. I request transcripts for my clients going back ten years, unless there is a specific year prior to a ten-year period that we know is at issue.

The transcripts may take thirty to sixty days to get to you. That can seem like a while when you have a

fire-breathing Revenue Officer on your back. Later in the book, we'll discuss some strategies for keeping them at bay. When the transcripts arrive, you can expect to see some portions blacked out. This redacted information is rarely essential to what you need to diagnose your IRS problem. Keep in mind that some tax professionals have the ability to obtain these transcripts much more quickly than the taxpayer.

The transcript for each year requested will show when your return was filed (if it was filed), the date the tax was assessed, the amount owed, payments made, penalties and interest due, and, perhaps the most important identifier: the Collection Statute Expiration Date (CSED, discussed in the next chapter).

CHAPTER 2

IS THE IRS EVER SOL?

Yes. The IRS has ten years to collect your debt. That is their **S**tatute **O**f **L**imitations, or SOL, as I like to call it. If they miss their ten-year window, and they sometimes do, the IRS is SOL! They can't collect the money after that, and they *must* release their Federal Tax Lien or face civil penalties. The IRS may lay dormant on your account for years before getting really aggressive in year nine, when the statute is about to expire. Why not? They get the benefit of all that penalty and interest that has piled up on you over those years.

The ten-year statute of limitations is displayed prominently on your transcript by the notation "Last CSED" (literally, "Last Collection Statute Expiration Date"). The CSED is the last possible day that the IRS can collect against you.

It is important to note that the ten-year CSED does not begin to run until your return has been filed! You don't get to play "gotcha" with the IRS. They get a fair crack at you while you have unfiled returns.

As with anything in the tax code, there are a myriad of exceptions to the general ten-year limitations period. The following events will toll (stop) the statute of limitations from running against the IRS:

- Bankruptcy
- Innocent Spouse Application
- A filed 911 form (Request for Taxpayers' Advocate)
- A Collection Due Process Hearing Request
- Pending Installment Agreement Requests (rarely enforced)
- Offers in Compromise
- Continuous absence from the US for six months or more
- Time a statutory notice of deficiency is pending

Most of these tolling events also carry an additional grace period (up to 60 days) for the IRS in which the statute is tolled.

The CSED will also provide you with other strategies as well in this process, as you will see in later chapters of this book. Most options, or “collection alternatives” as the IRS calls them, are directly affected by the CSED.

My law office collects this data and puts it into a readable report for *every* client in *every* case. Call me at 601-202-9974 to get your report today!

CHAPTER 3

WHAT IF YOU HAVE UNFILED RETURNS?

Let's take a break in the action to address an issue that often arises when you receive your transcripts. If you have not filed tax returns for any given year, the IRS will not discuss a collection alternative with you, period.

I get clients in my office regularly who have not filed returns for many years. You may be inclined not to file if you have gone for long periods—even decades—without filing returns. *You must file your returns.* First of all, non-filers are considered criminals by the IRS, and you can get up to one year in jail for this misdemeanor¹. Second, more often than not, the painstakingly slow IRS will ultimately uncover your

¹ The IRS has pushed in recent years to make this crime a felony.

non-filings. Third– parties are constantly filing information with the IRS about your income (1099s, for example) so that they are not left holding the bag for your taxes. Avoiding filing a return is simply not in your own best interest.

So, you have unfiled returns, what do you do? First, I advise clients that they need to file their next return on time. Your return is due on April 15 after the tax year in question, or October 15 of the following year if you have properly filed for an extension. Remember that, typically, a filing extension does not mean that you have an extension to pay. You must pay an estimate of what is due or face mounting penalties and interest. Next, you need to file your past-due returns. Tax professionals are more expensive than filing them yourself (\$400 per return or hourly at rates up to \$175/hour), but they are also prepared to get them filed correctly and quickly. Next, the overdue returns need to be filed with conservative deductions. You can't afford at this point to have your return flagged for an audit. Finally, file each year *separately* and by certified mail so you have a record when the IRS receives it. The IRS has a tendency to lose returns that are lumped all together.

Once your return is filed, it will take about sixty days for the IRS to “assess” (i.e., bill you for any liability

on) the return. If you have prepared your return for filing and have failed to include penalties and interest, the assessment will catch that and the IRS will bill you accordingly.

CHAPTER 4

WHAT IF THE IRS HAS FILED RETURNS FOR YOU?

Sometimes the IRS will file a return for a given year or years for you. These are called SFRs (Substitutes For Returns). SFRs are based on 1099s or W-2s that the IRS has on file for you. SFR's are usually (but not always) in the government's best interest, and are higher than if you had filed your return yourself and taken all the allowable deductions or credits to which you are entitled.

If there are no SFRs, assume that you must file for the past seven years. The statute of limitations for failure to file returns is six years. The IRS's policy is that they are not to prosecute a taxpayer for failure to file if the taxpayer comes forward and files the returns *before* an investigation commences.

If there are SFRs and you file your own original return, the IRS considers your case an “audit reconsideration.” Audit in this context refers to the IRS’s process of gathering information to file the SFR. They are reconsidering this type of audit because you are now filing an original return. Write at the top of your return in red ink, “Audit Reconsideration, SFR protest!” Audit reconsideration takes between 6-18 months to be accepted. If within that time frame you have not heard from the IRS that they have accepted the new return, file a Form 911 with the Taxpayer’s Advocate Office (TAO). Check www.irs.gov for your local TAO number.

In some cases, the filing of correct returns may reduce your liability to zero. The IRS may accept an original return in whole or in part. So, it is typically better to file the original return when it reflects a lower balance than that of the SFR.

CHAPTER 5

OKAY, NOW WE KNOW THAT YOU OWE THE IRS MONEY—SO WHAT DO YOU DO NOW?

The remainder of this book is dedicated to taxpayers who have determined from their transcripts that the IRS has assessed money against them. Later, we will outline in more detail each of the following general options or collection alternatives. However, essentially, here are your choices:

- 1 . **Full-pay the debt.** Borrowing money, selling assets, or utilizing money stored away in savings can generate cash to be applied to your liability. Not surprisingly, this is the IRS's preferred plan of action for taxpayers. The IRS routinely grants 120-day extensions to taxpayers whose income

or assets look to be enough to knock out the debt in total. This is a great option if you have the money because it stops crippling penalties and interest from accruing.

- 2 . **Pay the debt off in installments** (streamlined, enhanced and complex installment agreements). This is the IRS's alternative preference to full payment of the liability. Meanwhile, penalties and interest still accrue.
- 3 . **Discharge some or all of the debt in bankruptcy.** Some liabilities are dischargeable in a Chapter 7 Bankruptcy, if you otherwise qualify.
- 4 . **Have the IRS deem your tax fully or partially uncollectible within their limitations period** (Currently Not Collectible Status—CNC—or Status 53; Offers in Compromise; certain Partial Pay Installment Agreements).
- 5 . **Do nothing.** Unfortunately, this is where many of my clients are or have been when they come to see me. Most can attest that tax problems do not age like fine wine, they simply turn to vinegar. This route is a sure recipe for sleepless nights, marital strife, and ulcers.

CHAPTER 6

HOW DO I KNOW WHICH OPTION(S) THE IRS WILL ACCEPT?

FIGURING OUT WHAT'S MINE AND WHAT'S THEIRS

The IRS will base virtually every IRS collection alternative on IRS Collection Information Statement Forms 433-A (for individual wage earners and the self-employed), 433-B (for businesses) and 433-F (Automated Collection Services version of the 433-A). If you owe individual taxes of less than \$25,000, you may not have to fill out these forms. Consult a qualified tax professional immediately, as you may qualify for a “streamlined” collection alternative.

You can download 433-A at <http://www.irs.gov/pub/irs-pdf/f433a.pdf>. There are many nuances to these forms, and I never recommend that any taxpayer fill them out without consulting a

qualified tax professional. Don't believe me? Take a glance at the Internal Revenue Manual at <http://www.irs.gov/irm/index.html>. Pay special attention to Part 5, "Collecting Process," and Part 8, "Appeals." This minefield is the IRS Bible of collections, and it is constantly changing. IRS Revenue Officers are schooled in these procedures, and if they seem intimidating, they are meant to!

When analyzing the collection information statements above, the IRS understandably takes the path of least resistance. It asks, are there unencumbered assets that can be quickly and inexpensively liquidated to pay the liabilities in full or in part? Typically, they will look for large amounts of equity in your residence or money in your bank accounts. A qualified tax professional can help you with some planning to make these two easy routes less attractive to the IRS. More on that later.

In a nutshell, the remainder of the collection information statement comes down to this formula (lines 20-45 on the current 433-A): Total Income minus Total Allowable Living Expenses. Now, how does the IRS think about money "left over" in this equation? This part is easy. Remove the space between "The" and "IRS" and you have the answer: it's **TheIRS!**

Seriously,

the difference between the income and allowable expenses is the figure that the IRS will be pushing to get from you by way of a full or installment pay plan. That figure will also determine other collection alternatives available to you, if any. The IRS will rarely tell you that you have options other than full pay or installment pay plans.

As the above formula indicates, it is imperative that you *legitimately* raise the amount the IRS “allows” you to spend to stay alive and keep the lights on every month. This is the right-hand column of page 4, lines 33 through 45. It stands to reason that the higher the amount you can legally support in allowable expenses, the less money that the IRS can consider TheIRS at the end of each month. Be careful, though; the key here is *legitimate* expense.

Some of the allowable expenses are set by regional national standards found on the IRS website, e.g. food, clothing, housing, utilities, and transportation. However, other actual expenses are allowed. For instance, health care is allowed no matter how much it is, but you have to prove you need it. Taxes are allowed in actual amounts. Court-ordered payments such as child support are allowed. However, be careful

because kids eventually grow up and support stops. Consequently, the IRS takes the kids' ages into account in determining what is TheIRS. Child dependent care is actual, but stops or becomes dramatically reduced once kids go to school. It is not allowed at all if a spouse stays home. Private-school tuition is not allowed. Term life insurance premiums are allowed in "reasonable amounts." Other secured debts are allowed, that is, debts secured by collateral. Ideally, these are debts secured before any tax lien was filed.

HERE ARE SOME GENERAL GUIDELINES:

Make sure that you include your spouse's name on the forms, even if the liability is yours alone. List all the dependents you have claimed on your tax return. List only life insurance with a cash value (whole or permanent life insurance, not term life insurance). Use credible sources to determine your vehicle values (*Nada.com* or *Kbb.com*). Don't list credit cards as expenses unless they are fully secured by collateral. The IRS does not care if you can pay your obligations with those lenders, and they *will* want to know if you have any credit available to pay your IRS debt. Most important, list all your assets and income sources. You can argue over the values of property with the IRS all

day long, but if you leave something out, whether on purpose or otherwise, you can face criminal charges.

Simply put, list everything!

CHAPTER 7

FULL-PAY STRATEGIES

If you have significant equity in your home or your income exceeds guidelines for any of the alternatives in this book, full-pay is a viable option. It gets rid of the massive penalties and interest that accrue on tax debts and it gets the IRS off your back. Once the liability is paid, the Federal Tax Lien the IRS has likely filed against you goes away.

To liquidate the equity in your home, you may need a loan. The interest on mortgage payments is usually tax-deductible, so you receive that added benefit by paying in full. If you don't already have a contact for obtaining a refinance on your mortgage, qualified tax professionals will have referrals for you—professionals who are used to dealing with IRS tax liens. It is difficult, but not impossible, in today's economy to get a second mortgage with a tax lien.

Typically, the mortgage company will simply pay the lien off at the closing table.

To full-pay, you need the IRS to lift its super-priority position, at least temporarily, in order for most loan companies to agree to close. Most of the time, the IRS is more than willing to lift the Federal Tax Lien if they are going to get paid in full. However, if you experience any difficulty in this process, call a tax professional or the Taxpayer's Assistance Office (TAO) to assist you.

If the mortgage results in a partial payment and you intend to keep your property, you will definitely need to have any existing Federal Tax Lien subordinated below the mortgage lender's lien to refinance your property. See IRS Pub. 784. If you intend to sell your property, and the proceeds will not pay off the lien, you must request a Certificate of Release of Property from a Federal Tax Lien. See IRS Pub. 783. Either request (lien subordination or release) goes to the Technical Services Advisory Group. In Mississippi & Tennessee the Advisory Group may be reached in writing or by telephone at:

For Mississippi:

IRS Advisory Group
1555 Poydras St, Suite 220-Stop 65
New Orleans, LA 70112-3747
Tel. 504-202-9630
Fax. 877-477-9213

For Tennessee:

IRS Advisory Group
801 Broadway
MDP 53
Nashville, TN 37203
Tel . 615-250-5797
Fax . 615-250-6008

CHAPTER 8

INSTALLMENT AGREEMENTS

The IRS has the authority to enter into a written Installment Agreement that enables a taxpayer to make payments over a period of time if the arrangement will facilitate collection of the tax. This applies to individuals and business entities. It acts as a contract between the IRS and the taxpayer.

ADVANTAGES:

1. In most cases, a written Form 9465 (Request for Installment Agreement) causes collection activities to stop while the request is pending.
2. If the Installment Agreement is accepted, collection activity stops for the duration of the

agreement, so long as the taxpayer does not default on payments.

- 3 . The CSEDs (Collection Statute Expiration Date) continue to run on the liabilities.

DISADVANTAGES:

1. Penalties and interest continue to run against the taxpayer.
2. Incurring additional tax liabilities not contemplated in the agreement is considered default, i.e., liabilities that accrue after the agreement will cause it to go bust, and collection will start again. If you have defaulted, it becomes more difficult to enter a new agreement. In some cases, the IRS will not enter into a new agreement at all.
3. The Federal Tax Lien you likely have will not be removed until all the liability is paid or the CSED runs on it.

There are essentially four types of installment agreements.

1 . **Installment Agreement by Right:** The IRS *must* give you an Installment Agreement if:

- your liability is \$10,000 or less.
- no prior Installment Agreement has been established.
- you have not had a failure to pay on time for the previous five years.
- when requested, you provide financial statements indicating you cannot pay in full.
- the full liability will be paid by installment within three years.

2 . **Streamlined Installment Agreement:** Also known as the \$50,000 loan from the government. If you owe less than \$50,000 (penalties and interest included), the IRS may approve a request for an Installment Agreement that would get the liability paid in full within 72 months (six years). The taxpayer does not have to fill out a Collection Information Statement (433-A, B, or F) in certain circumstances.

- 3 . **Complex Installment Agreement:** If your liability exceeds \$50,000, you must negotiate with a Revenue Officer (RO) or Automated Collection Service (ACS) for terms of the agreement. The RO or ACS may tell you that you have to pay in full in five years (like the Streamlined IA) . This is not correct. The installments may last the length of the CSED if your 433-A, B, or F shows that this is all you can pay.

- 4 . **Partial Pay Installment Agreement:** Like the Complex Installment Agreement, except the taxpayer does not have sufficient assets to full pay over the length of the CSED. For example, a taxpayer owes \$100,000, but the taxpayer's 433-A, B, or F shows he can only pay \$50 per month. Since the liability will never get paid over the course of the CSED, the liabilities fall off as the statute runs on them. The taxpayer's financial condition is subject to review every two years, but this is a great program.

CHAPTER 9

ARE YOUR LIABILITIES DISCHARGEABLE IN BANKRUPTCY?

It depends. Only personal income tax (1040 liabilities) meeting certain other criteria are dischargeable. Payroll liabilities or Trust Fund Recovery Penalties are not dischargeable.

When the bankruptcy laws changed in 2004, Chapter 13 repayment plans became the preferred type of bankruptcy. Note that because the IRS enjoys what is known as super-priority among your other creditors, Chapter 13 will not discharge your principal liability for less than you owe. You must be careful that you are a candidate for a Chapter 7 in order to have your liabilities discharged for less than they say you owe.

Here are the criteria that must be met:

- Must be 1040 liability
- The due date must be at least three years old (with filing extensions)
- A late filed return must have been filed for at least two years
- The assessment of the tax must be over 240 days
- The return must not have been deemed fraudulent
- The taxpayer must not have been guilty of willful intent to default or evade the tax

Taxpayers who qualify for bankruptcy discharge often find bankruptcy to be a useful weapon whether they ultimately use it or not. If you use it, you may be able to knock out some or all tax liability and some other debt as well. If you don't use it, you can always threaten bankruptcy in the process of seeking an Offer in Compromise or other collection alternative. The argument is that the IRS can take your proposed collection alternative or receive nothing (or very little) after discharge.

To make these determinations in the best way, you should consult with a qualified tax professional who knows bankruptcy law or who can refer you to qualified bankruptcy counsel.

CHAPTER 10

CURRENTLY NOT COLLECTIBLE (HARDSHIP) STATUS

The IRS is not completely tone-deaf to the hardships that many face in this economy. If you are unable to pay for necessities (food, heat, clothes), things are bleak. However, the IRS knows that it can't get blood out of a turnip. Contrary to what you may think, the best time to cut a great deal with the IRS is not when you are firing on all cylinders, financially, but rather when your finances look the worst on paper. If this is your situation, you may seek relief under the IRS's Currently Not Collectible (CNC) or hardship status, or Status 53.

If you can demonstrate that paying your liability would result in "economic hardship," the IRS will not force you to pay your liabilities. You must demonstrate

hardship on your 433-A form, that is, you must show that your monthly allowable expenses exceed your income. This program usually applies to individuals who are unemployed, aged, and/or disabled.

This collection alternative is great because you pay nothing while you are in it. However, the IRS can review it every two years to make sure that you still qualify. The CSEDs continue to run against the IRS during this time. You are not prevented from seeking another collection alternative while you are in Status 53 (such as an Offer in Compromise, discussed in the next chapter); but what is the point, unless your financial condition has changed or is about to change and the IRS is about to review your status? Remember, you always want to keep the CSEDs moving, which takes us directly to a very important tip:

NEVER, EVER SIGN A CONSENT FORM WITH THE IRS TO EXTEND THE CSEDs. Sometimes the IRS asks you to sign and sometimes they don't. If the time remaining to collect against you is short, you can almost count on receiving a consent form request from the IRS. Unfortunately, there are some unscrupulous collection officers who may tell you that you *must* sign the consent form to finalize an installment agreement.

This is *not* true! Think about it. No one would ever qualify for a partial pay installment agreement if the IRS could simply require you to extend their statute of limitations (see partial pay installment agreements in Chapter 8). If you are the turnip and there is simply no more blood for the IRS, I cannot fathom a fact scenario where you would benefit from extending the ten-year CSED.

CHAPTER 11

THE OFFER IN COMPROMISE

Now, we come to the crown jewel of collection alternatives: the IRS' Offer in Compromise (OIC) Program. The last published report by the IRS shows that the average settlement from this program was twelve cents on the dollar! Think about it this way. If you owe \$100,000, your average offer would settle for \$12,000. If you owe \$50,000, your average settlement is \$6,000. As you can see, this is a very important and powerful program.

If the IRS approves your OIC, your entire tax debt is forgiven when you pay the accepted offered amount. Since savings can be substantial, OIC requirements are strict and much paperwork is required. The IRS considers the equity you have in assets that could be “theoretically” seized for full payment, as well as the

disposable income (i.e. your income less “allowable” expenses) you could pay each month toward your total tax debt.

The OIC rules changed recently, for the better. The IRS still looks at assets that could be seized to pay the total debt, but the disposable income you must pay has been reduced significantly. The monthly amount of disposable income used to be multiplied by 48, but it is now multiplied by 12 (or 24 in some circumstances) .

For instance, if your income is \$4,000 per month and your disposable income is \$1,000, your OIC (plus asset equity) would be $\$1,000 \times 12$ or \$12,000. This is called the 12-Month OIC. An OIC under the old rules would have been $\$1,000 \times 48$ or \$48,000.

Here’s the catch. Twenty percent (20%) of your offered amount is required to be submitted with the OIC, along with a processing fee, in order to be deemed processable. This knocks some candidates out of the program right off the bat if they can’t afford the down payment.

So, the IRS' new rules have made accommodations for that as well. If you can't submit the initial 20%, you can offer to pay your disposable income with the offer for 24 months and avoid the 20% down. This is called the 24-Month OIC. You will notice that the net effect of the 24-Month OIC amounts to you paying twice as much as the 12-Month OIC. In the scenario above, \$1,000 in disposable income X 24 months = a \$24,000 OIC, as opposed to a \$12,000 OIC.

The IRS will average your last 6 months of disposable income if you are self-employed. If your total debt is less than \$50,000, you may qualify for a "streamlined" OIC, which receives less scrutiny from IRS examiners. These are big developments, but don't expect the rules to be around forever. They are available *now*!

If the OIC is rejected, any down payments, monthly payments, or filing fees will not be returned to you; but, you can designate money to go toward any tax period on the memo line of your check. I always recommend designating the money to the newest liability, since the CSED is typically longer on the new periods. This way, just in case the offer is returned or rejected, your money is at least applied to your advantage.

The acceptance rate is not great for first-time offers. Although, your chances are much improved by hiring a local, licensed lawyer who deals with the IRS every day. You may need to appeal the offer results at least once. Appeals have a good acceptance rate, if the offer is good. Appellate examiners are pretty malleable, and this is where a local, licensed lawyer can really help your odds of acceptance. Do your research and find a lawyer who will submit an OIC, including at least one appeal, for a flat fee. Hourly fees on these proceedings can eat you alive, so it is in your best interest to have the lawyer charge you a flat rate to avoid misunderstandings. Hire a local, licensed lawyer who routinely deals with the OIC appeals process every day. You will be glad you did!

One last thing on OIC's. You have to be current on filings and payment (if any is due) for the year that the OIC request is submitted and for 5 years following an OIC acceptance. So, it further benefits you to find a lawyer who can file for you and formulate a plan to stay current into the future. If you aren't current at the time the OIC comes up for approval, the OIC won't be processed. If you have a hiccup in filing or paying in any of the 5 years after the OIC is paid, all the forgiven debt comes rolling back on top of you. So, your lawyer

needs to get you current and staying current into the future.

CHAPTER 12

INNOCENT SPOUSE RELIEF

What if your spouse is to blame for your tax problem? The IRS realizes this may be a possibility, and has carved out a collection alternative known as Innocent Spouse Relief.

There are three types of relief available as a collection alternative:

1. **Classic Innocent Spouse Relief** (this is the broadest category). To qualify for any of these programs, the “innocent spouse” must meet the following guidelines:
 - The innocent spouse filed a tax return jointly with the other spouse.

- There is an understatement of taxes due.
 - The understatement is attributable to the erroneous reporting of income or deductions of the other spouse.
 - When the innocent spouse signed the return, she did not know, or have reason to know, of the understatement of tax.
 - Based on the totality of the circumstances, it is inequitable (unfair) to hold the innocent spouse liable for the joint tax deficiency and associated penalties and interest.
 - The innocent spouse claims relief no more than two years after the IRS begins collection activities. *Please note* that in 2011 the IRS lifted the two-year ban. If you previously submitted a request for Innocent Spouse Relief, you will need to re-submit the request on a new form.
2. **Separate Liability Election** (the liability should be split among spouses). To qualify, the following factors must be present:
- A joint return must have been filed.

- There is an understatement of taxes due.
 - The innocent spouse must be legally separated or no longer married to, or living apart from the other spouse for twelve months or longer.
- 3 . **Equitable Relief** (in other words, it's not fair). This program is a catchall form of Innocent Spouse Relief. Relief must be unavailable under the Classic Relief or Separate Liability Election programs. Essentially, you are arguing that, even though the taxpayer is unable to meet the elements of the other two types of innocent spouse relief, it is still unfair to hold the innocent spouse liable for the understatement or underpayments of the tax. The IRS scrutinizes these requests to make sure that there is not a fraudulent transfer of assets, or a scheme, between the spouses. For example, neither spouse can have transferred property to the other for the main purpose of avoiding tax or payment of tax. This happens most frequently in home-title transfers between spouses.

All this said, Innocent Spouse Relief is a fact-intensive endeavor and it is difficult to prove. The rates of

success are low, and must usually be appealed. This is definitely one area where you need the expertise of a qualified tax professional. Again, a tax professional's hourly fees for Innocent Spouse Relief requests to the IRS can get expensive. It is usually best to make flat-fee arrangements with a tax professional for Innocent Spouse Relief requests, including at least one appeal.

CHAPTER 13

PENALTY (AND ASSOCIATED INTEREST) ABATEMENT

Back in the good ol' days before massive national deficits, the IRS used to charge penalties and interest as a slap on the wrist to remind you of your civic duty to file and pay your taxes in full, on time. Now, penalties and interest are wielded as a weapon to choke you into submission. However, the IRS will abate (forgive) penalties and will consequently lower the interest associated with those penalties, if you can show what the IRS calls “reasonable cause” that they should do so.

Think about the reasons why you could not file your tax return or pay off your taxes when they were due.

That list may include one or more of the following:

- I was sick.
- I lost my job.
- My wife and I got a divorce.
- I'm broke.
- I had a gambling problem.
- My house was in foreclosure.
- I had to take bankruptcy.
- My creditors sued me, got a judgment, and relentlessly garnished my wages.
- I had a substance abuse problem.
- I am a senior citizen.
- My kids were in the hospital.
- I had depression.
- I didn't know how to file my returns.
- I can't find my W-2s.

- My tax records were lost in a fire.
- When I called the IRS, they told me to...
- I didn't think I made enough money to file.

These are all “reasonable causes.” More than likely, there was some legitimate reason that you could not file or pay. Don't minimize your reasons. Just list them and expand upon them with the facts of what was going on in your life at the time when you failed to file or pay. You just have to convince one IRS examiner to buy into your story, and you may be able to do away with all the penalties and interest that have been haunting you. Recent data shows that penalty abatement requests have a fifty-fifty success rate. So, you really have nothing to lose.

Here is what you need to do. List the tax years in which you failed to file or pay. Then, match up those years chronologically with the events going on in your life which caused you to fail to file and/or pay, and make your case concisely. Lengthy narratives are unnecessary, and probably won't be read by the examiner anyway. Keep the tone of your letter polite and genuine, and attach supporting documentation. Again, less is more.

Find your most genuine and convincing arguments and the data that supports those arguments, and attach them. Make a copy of your letter, then mail your letter to your local IRS office or the service center in your area.

The IRS is notorious for losing these letters in the shuffle. If you have not heard from them in sixty days, write another letter, telling them that you would like to have an answer to your letter. Attach a copy of the original letter, and draw their attention to when you originally mailed it. If your request is denied, write them again and tell them that you would like your request to be reconsidered or appealed.

CHAPTER 14

PAYROLL TAX PROBLEMS AND SOLUTIONS

Many successful small-business entrepreneurs have had this problem at one time or another. In this economy, it is easy to get behind on your payroll taxes if you are robbing Peter to pay Paul, so to speak, just to keep the lights on. But it can begin a deadly cycle, and once in that cycle, losing your business becomes a very big possibility.

If your business has been paid a visit by an IRS Revenue Officer seeking delinquent payroll taxes, you already know that they are extremely aggressive and unforgiving. They seem more interested in shutting down your business than listening to excuses or requests for more time. Unfortunately, they are what they seem!

The fact is, recidivism (repeat offender) rates for businesses that get behind with payroll tax are extremely high. It is nearly impossible to keep operating to pay off old payroll tax liabilities while staying current with new ones. Any cash flow hiccup causes the business to end up stacking new payroll liabilities on top of the old ones, a phenomenon known as “pyramiding.”

In the IRS’s mind, it is left with egg on its face if it gives a business owner some room to operate, or slow-pay them, and then the business turns around and pyramids more liabilities. It is easier for the IRS to shut your business down and stop the bleeding now, than to do it later, when there are more liabilities. So, the IRS’s preferred method is to figure out where the assets, if any, are. Revenue Officers are trained to identify the lifeblood of the business (equipment, real property, accounts receivables) to euthanize the business. Then, they look for the “responsible person(s)” who caused the delinquency. “Responsible person” is an IRS term of art that means a portion of the liability (the Trust Fund portion) will be assessed personally against some-one in the company who had control of monies that should have been paid to the IRS. Note: trust-fund recovery penalties are not dischargeable in bankruptcy.

So, what do you do?

TIME FOR A REALITY CHECK!

Once the IRS is into you for delinquent payroll taxes, things move at lightning speed in order for the IRS to cut off any further pyramiding. You must move quickly, too. Your first action item is to decide whether or not your business is worth saving. This may sound harsh, but it's true. You must be able to make the toughest decision that any business owner ever has to make. Is it worth it to keep the doors open on this business if it is likely that the business will be upside down again on payroll taxes after struggling to pay new and old liabilities for a few more months? If you close the business down and you have no more employees (i.e., no further payroll liabilities), the IRS's pyramiding concerns are over.

TIME TO CALL A LOCAL, LICENSED TAX PROFESSIONAL!

This is one of the areas where I strongly recommend that you enlist professional assistance. If you have made the decision to dissolve your company, there are *legitimate* strategies to relieve half or more of the liability. However, the IRS watches dissolution and asset-transfer activities with a careful eye for fraud; and fraudulent activity could land you in jail.

If you are going to keep the business afloat, you must stay current and have a plan to attack the old payroll—a plan that is better than an IRS Revenue Officer’s plan, which is to shut it down. Keep in mind, the strategy for remaining in business is not to save money on your tax bill. It is survival. For instance, you cannot get an Offer in Compromise for a company if it is going to remain in business. A tax professional can help you put together an aggressive, non-fraudulent plan to legitimately attack the old liabilities while staying current with your tax requirements.

CHAPTER 15

TYING IT ALL TOGETHER: IRS STRATEGIES

Here I have compiled a quick summary reference by IRS problem-type, with strategies for collection alternatives that may be available to you .

Issue: I just want to pay the IRS what I owe and be done with them, their penalties, and their interest.

Solution: Full pay. See Chapter 7. Remember, nothing prevents you from combining your full-pay strategy with a request for abatement of penalties and interest associated with those penalties (see Chapter 13).

Issue: I want to make payments to pay off my taxes.

Solution: Request one of the four types of installment agreements listed in Chapter 8.

Issue: The penalties and interest are killing me.

Solution: If you have what the IRS calls “reasonable cause,” your penalties may be abated (forgiven). There is no such thing as interest abatement, except interest which has accrued on a penalty which has been abated. See Chapter 13.

Issue: I cannot pay the IRS or my monthly bills for necessities.

Solution: Request hardship status. If you are aged, disabled, or otherwise unable to pay your taxes or your bills for necessities, the IRS may place you in hardship status (called Status 53), which stops collection activity totally. Remember, the IRS may review the taxpayer’s status every two years. See Chapter 10.

Issue: The IRS filed returns for me and says that I owe, but I have never filed returns.

Solution: Request an Audit Reconsideration. In other words, have your returns properly prepared and file them if they are less than what the IRS says you owe. See Chapter 4.

Issue: This tax problem is my spouse’s fault.

Solution: If your spouse has caused a joint liability that is not your fault, request one of the three types of Innocent Spouse Relief listed in Chapter 12.

Issue: I can access some money now (or shortly) to pay the IRS, so cut me a deal.

Solution: Request an Offer in Compromise. This is the “pennies on the dollar” program that could reduce your tax debt to zero. See Chapter 11.

Issue: I have lots of debt and an IRS tax liability.

Solution: Bankruptcy. See Chapter 9. Whether you ultimately take bankruptcy or not, if your tax debt is dischargeable in Chapter 7 bankruptcy, threaten bankruptcy in conjunction with a request for another collection alternative. The thinking here is: you can get some money from me now, or none in bankruptcy.

Issue: The IRS is threatening to shut my business down for payroll tax liabilities.

Solution: You must determine if your business will be able to avoid “pyramiding” future payroll taxes. See Chapter 14. If not, shut the business down and

move on. If you can stay current on future liabilities, and you are committed to staying in business, start making voluntary payments toward the trust-fund portion of the liability or request an Installment Agreement.

CHAPTER 16

GET BACK TO YOUR LIFE

So, that's it—in a nutshell, of course. Again, I want to remind you that you are not your tax problem. You are a mother, father, husband, wife, son, or daughter. Look at the bright side: something, even if it was just existing as a resident of our great country, allowed you to make enough money to have to pay some back to the government. That is the root of every tax problem.

For many, there was a time when the money flowed and you prospered. For nearly everyone reading this book, it was a time when you could sleep relatively well at night, without that sinking feeling gnawing at you that your money, your home, or even your freedom were in jeopardy. It is possible to get to that place again, but it starts with you. The journey of a thousand miles begins with the first step.

That's what *A Tax Attorneys Guide to Surviving the IRS* is all about. Doing or undoing the things you need to address to bring you back to where you started before this began. There are a million ways to skin a cat with your IRS problem, but one thing is for sure. It has to start with you. Get back to your life and start sleeping like a baby again. You can do it.

If, at any point, you feel uneasy about this process or would like a tax professional to take ownership of your tax problem from start to finish, we are here. I have devoted my professional life to solving tax problems.

I take a limited number of cases per month and per year, so that I can focus on only the toughest IRS problems. We are a small shop with a down-home feeling; we hope you'll feel as important as you are to us. Call and explain your situation to us and we will schedule you for a free thirty-minute consultation.

Thanks for taking the time to help yourself get back on the right track.

Joseph Damiens

Damiens Law Firm, PLLC
Ridgeland, Mississippi
www.DamiensTax.Com
601-202-9974