

TESTIMONY OF THE NATIONAL SOCIETY OF ACCOUNTANTS  
BEFORE THE  
INTERNAL REVENUE SERVICE OVERSIGHT BOARD  
ON  
RECOMMENDATIONS TO REFORM THE OFFER IN COMPROMISE (OIC) PROGRAM  
JANUARY 27, 2003

## Introduction

The National Society of Accountants (NSA) is a national professional society that, along with its affiliated state organizations, represents 30,000 members who provide accounting, tax preparation, taxpayer representation, financial and estate planning, and management services to approximately 19 million individuals and small businesses. Most members are sole practitioners or partners in small- to medium-sized accounting firms. NSA appreciates the opportunity to share with the IRS Oversight Board our recommendations to improve the Offer-in-Compromise program.

## Background

In April 1992, then Assistant Commissioner (Collections), Bob Wenzel, issued a new IRS policy statement on Offers in Compromise. The new policy statement, P-5-100, provided that an Offer in Compromise would be accepted when it was unlikely that the tax could be collected in full and the amount represented reasonable collection potential. In addition, it stated that the goal of the program was to collect what is potentially collectible at the earliest time possible, at least cost to the government and to bring taxpayers back into compliance. In the memorandum announcing the change to IRS collection field function personnel, Mr. Wenzel stated: "I know this policy is a significant change in the Service's philosophy and culture at all levels."

NSA recognizes the difficulty, and is not insensitive to the problems, inherent in instituting organizational change. Unfortunately, the record shows that IRS management of the program has not lived up to the spirit and intent of P-5-100 and clearly reflects the agency's difficulty in administering Internal Revenue Code Section 7122. IRS administrators have created endless bureaucratic mazes and convoluted procedures to prevent taxpayer access to the relief contemplated by law. The truth is Treasury's technicians have destroyed this law's potential for nearly a hundred years.

NSA fully endorsed P-5-100. Year upon year NSA has worked diligently to help the IRS improve the OIC process. NSA worked with staff at all levels of the IRS from revenue officers to the Commissioner, Congressional staff members in the House and the Senate, staff and commissioners of the Commission to Restructure the IRS, the Commissioner's Advisory Group (now IRSAC), consultants from Booz Allen, and the National Taxpayer Advocate. We advocated reform through the national press.

Here we are over ten years later, and by any theoretical or statistical measure, the OIC program is not working to anyone's satisfaction. Many IRS executives are disheartened by criticisms leveled at them from every quarter. Many of our colleagues in the professional community have all but given up on the program. The IRS Oversight Board has expressed concern about its administration or lack thereof. The US Treasury has acknowledged problems in

the program: In a letter to NSA, the Assistant Secretary for Tax Policy stated that Treasury is “aware of the challenges facing the OIC program.” In the final analysis, the OIC program will continue to be a disaster as long as IRS employees and executives manage it with a collection mindset as opposed to those who have a settlement and educational mindset.

## RECOMMENDATIONS

NSA encourages the IRS to undergo a watershed change in its attitude toward IRC Section 7122 and redesign the OIC program from the ground up. We recommend that an entirely new approach to the offer program be created that takes into consideration the spirit of then Assistant Commissioner (Collections), Bob Wenzel’s 1992 memo, Policy Statement P-5-100 and the intent of Congress as specified in the IRS Restructuring Act of 1998 and related Committee Reports. In this light and in the anticipation that our recommendations will stimulate discussions and actions that will result in better ideas and move the process forward, NSA offers the following recommendations:

1. The IRS Oversight Board should use its oversight authority to support the removal of the OIC program from enforcement personnel and turn it over to TEC and SPEC units within the Small Business/Self-Employed and Wage and Investment operating divisions. Their mission will be to turn the program into a compliance enhancement program with a bias toward settlement of tax obligations. TEC/SPEC would use the OIC program to educate taxpayers and restore them to full voluntary compliance.
2. Acting Commissioner Wenzel should organize a TEC/SPEC working group to design a new Offer in Compromise program. The working group should report directly to the Commissioner’s office and accept recommendations from a small group of individuals that includes representatives from the following areas: the practitioner community, the IRS Oversight Board, the National Taxpayer Advocate’s office and the IRS. Participation by the Senate Finance Committee and Ways and Means Committee should be encouraged. NSA is prepared to provide specific recommendations if called upon to do so.
3. An experimental 656-EZ OIC with a one page 433A-EZ should be developed for the Low-Income Taxpayer Clinic (LITC) program. The new approach would allow the IRS to accept the LITC representative’s recommendation with the concurrence of a TEC or SPEC senior tax specialist. The higher echelons of the IRS will have to trust the judgment of the professional in the field. Selected LITC OICs can be audited to determine if the program is working as intended. The IRS accepts the figures on regular tax returns and only audits a select few. Why should they audit every single Offer in Compromise submission? It makes no sense economically particularly when the amount of the tax is less than \$50,000. Qualifying low-income taxpayers should be encouraged to seek help from Low-Income Taxpayer Clinics.
4. The IRS should temporarily withdraw its proposal to institute a \$150 user fee for OIC submissions. The proposal can be revisited under a new OIC program.

Conclusion

Clearly, a properly designed and administered offer program that follows the spirit of P-5-100 is a win-win for both the taxpayer and the Federal government. The pot of gold at the end of the rainbow for the IRS is five years of contractual full compliance and the closing of an account that is either not collectible in full or collectible only by means of hardship or administrative unfairness imposed on the taxpayer.

Note: NSA is the recipient of a grant from the IRS to establish a Low-Income Taxpayer Assistance Clinic. No grant funds were used or expended to prepare this statement.

## ADDITIONAL INFORMATION REQUESTED BY THE IRS OVERSIGHT BOARD HISTORICAL HIGHLIGHTS OF THE OFFER IN COMPROMISE PROGRAM

July 1868: The Secretary of the Treasury is authorized to compromise tax liabilities.

February 1960: IRS publishes Reg. 301.7122-1 Compromises. The regulation establishes doubt as to liability and doubt as to collectibility as criteria for accepting offers. The statutory language of Section 7122 does not explicitly place limits on the Secretary's authority to compromise. It appears that the Commissioner has total discretion as to the implementation and design of the OIC program.

1910 - 1992: Offers to compromise were not widely used to resolve tax cases.

April 1992 (The new OIC era): In a Memorandum to "All Collection Field Function Personnel," Assistant Commissioner (Collections) Bob Wenzel (now Acting Commissioner of the Internal Revenue Service) approves a new Policy Statement on offers in compromise. Assistant Commissioner Wenzel indicated that "The driving force behind the policy is the recognition that reporting accounts as currently not collectible or entering into extended installment agreements is not always the most effective way of bringing taxpayers into compliance with the tax laws."

This position was reflected in IRS Policy Statement P-5-100, which provided that an offer in compromise would be accepted when it is unlikely that the tax liability can be collected in full and the amount offered reasonably reflects collection potential. The statement went on to say that, the goal of the compromise program is to achieve collection of what is potentially collectible at the earliest possible time and at the least cost to the government while providing taxpayers with a fresh start toward future voluntary compliance.

May 1994: Assistant Commissioner (Collections) Wenzel met with a Task Force that included stakeholder organizations, the IRS, GAO and IRS Internal Audit representatives. The purpose of the initial meeting was to provide for an exchange of information regarding what changes, if any, the Service needs to consider with respect to current policies. Specific emphasis was focused on the analysis of necessary taxpayer expenses and reasonable amounts of those expenses. In some parts of the country the program worked relatively well from 1992 until 1994 except for the wide disparity of living expense allowances.

At the meeting the IRS expressed frustration that GAO was criticizing them for not being diligent in their evaluation of taxpayer assets and payment ability when processing OIC's. While on the other hand, the practitioners were criticizing the Service for being inconsistent in the application of their evaluation techniques.

NSA expressed concern that an attempt to create a consistent treatment of OIC's through a restrictive regime or formula would compromise the concept of reasonableness. NSA said, "A 'black and white' approach to curing the perceived problems in this system could quite likely prove more problematic than the illness." NSA's prophetic statement emphasized that practitioners wanted consistency of philosophy as opposed to an unyielding formula. When the living expense standards and resulting regulations were issued, the program became relatively

unworkable.

September 1994: The IRS announced it was issuing a revised Offer Manual that promised to address the “necessary living expenses” problem. The new guidelines were to establish ranges or amounts for necessary living expenses, depending on the geographic area of the country and the income level of the taxpayer.

May, 1996: The Commissioner Advisory Group’s OIC Subcommittee issued a report based on the analysis of the offer statistics of all the IRS districts and included feedback from practitioners overlaid with input from IRS executives and OIC staffs. The CAG subcommittee concluded that the OIC program as currently administered by the IRS was flawed in concept. The major recommendation was to reassign the offer program to individuals other than enforcement personnel. This new group should design a program in line with the philosophy expressed in Policy Statement P-5-100 and the 1992 memo.

September, 1996: The Director, Office of Special Procedures, issued a memorandum outlining the procedures for reporting financial information of the non liable spouse or non compromising spouse.

July 1997: The Commission to Restructure the IRS issued its report and recommends that hardship and equity be included as factors in accepting offers.

July 1998: The President signs the IRS Restructuring and Reform Act. Congress, in its Committee Reports, tells the IRS to liberalize the OIC program and to make it available to more American taxpayers. Furthermore, Code Section 7122 of the Statute made it clear that the use of schedules should be considered as guidelines and should not result in the taxpayer not having adequate means to provide for basic living expenses. The Service was also directed to consider hardship and equity as factors.

June 2000: Treasury Inspector General for Tax Administration audits the OIC program. The IG concluded “More Taxpayers Can Benefit From the New Offer in Compromise Provisions.”

December 20, 2000 through March 9, 2002: Collections statute not (temporarily) tolled for filers of OIC’s. Practitioners are disappointed when Congress allowed the IRS to convince it to change the statute as time was no longer an ingredient in the timely processing of offers.

August 2001: IRS centralizes the receipt and perfection of all offers into two campus locations, Brookhaven and Memphis.

June 2002: In an article published in Tax Notes, NSA’s Federal Taxation Chairman reported that “... the IRS (should) cut its losses, dismantle the current structure, redeploy its personnel, and reassign the OIC program to a group other than enforcement personnel. As long as the IRS views the program as one of several collection alternatives rather than as a revenue opportunity,

the OIC program will remain ineffective, counterproductive, and a waste of valuable resources.

The simple fact is that no matter how hard the IRS has tried, by its own admission, it has not effectively administered the OIC program at any time in its history.”

November 2002: Commissioner Charles Rossotti, in a letter to NSA, reports that he is pleased to note that after reviewing the Centralized process, changes were made that resulted in significant improvement...”

January 2003: NSA meets with Acting Commissioner Bob Wenzel and recommends that he organize a working group to redesign the Offer in Compromise program.