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## TAXES

### Tax scam's deal really is too good to be true

By Michael Estrin • Bankrate.com

If the promise of settling tax debt for pennies on the dollar sounds too good to be true, your instincts are right on the money, say a number of lawyers and accountants who routinely represent clients before the IRS.

While thousands of professionals regularly advocate for lower tax bills on behalf of their clients, a breed of settlement firms has cropped up with ads that promise aggressive representation and pie-in-the-sky results.

Although the ads may promise access to seasoned professionals capable of bringing an array of legal and financial tools to bear, most firms claiming the title of "tax settlement specialist" are really one-trick ponies, says Leslie E. Linfield, executive director of the Institute for Financial Literacy, a Maine-based nonprofit that counsels consumers on a range of financial issues.

"What they're selling is an offer in compromise (OIC)," Linfield says. "But the reality is that an OIC is a real long shot."

#### What is an OIC?

Simply put, an OIC is a settlement agreement between a taxpayer and the IRS. Like any creditor, the IRS recognizes that not all accounts will be paid. Rather than letting a debt become uncollectable, the IRS opts to accept less money than is owed in certain circumstances.

#### Tips to avoid an OIC scam:

- Steer clear of providers that only (or mostly) do OIC work.
- Do a Web search on a prospective provider and add the word "scam" to learn from the experiences of other consumers.
- If you think you qualify, try to do an offer in compromise yourself first.
- Be realistic. If the price of hiring a specialist is several thousand dollars, ask yourself if pleading hardship will really fly.

According to the IRS, an offer in compromise will be accepted if the amount offered by the taxpayer is equal to or greater than the reasonable collection potential.

That means the taxpayer will have to present a complete financial picture to the IRS, detailing everything from assets and liabilities, to income and expenses. While the IRS may accept an offer in compromise after looking at the taxpayer's total ability to pay, successful offers will likely only go to those in dire financial straits, says Walter Pagano, a 10-year veteran of the IRS and now a partner at Eisner LLP, an accounting firm.

"For all intents and purposes, (a successful OIC) means you're looking at a rather bleak financial picture for the taxpayer," Pagano says.

Generally speaking, a successful offer in compromise will come from a taxpayer who has liabilities in excess of his or her assets and little to no disposable monthly income after allowing for basic expenses.

The allowable expenses don't amount to much, and they don't take into account regional variations in cost of living, says Stuart B. Tash, who spent six years as a revenue agent for the IRS before opening his own accounting practice in New York.

"The IRS can afford to wait," Tash says. "In practice that means you have to be either really old or really sick, because the IRS will want proof that you will never be able to pay."

With such a narrow window for acceptance, it's little wonder that the IRS reports rejecting nearly three-quarters of the 46,000 settlement offers it received in 2007.

#### Will a professional increase your odds?

Outside of the specialty shops, most tax professionals tend to shy away from the offer in compromise, citing limited room to maneuver on their clients' behalf and the obvious economic reality that those who can afford to hire a lawyer or accountant aren't likely to meet the IRS' strict financial criteria for an acceptable offer.

"The OIC isn't a panacea, and a lot of people simply buy into the ads and hope for the best," says Matthew Campione, a former lawyer for the IRS and now a tax partner with Smolen Plevy in Vienna, Va.

According to Campione, the OIC process actually hems in many taxpayers because it prevents them from disputing the underlying liability -- a tactic that can lead to dramatic reductions in some cases -- but that may require taking the case to federal court. But Campione says if the taxpayers are certain that the amount owed is correct and they meet the IRS requirements for an OIC, they should be able to prepare their offers alone or with the help of a tax preparer.

For Campione and others who make their living as tax professionals, there is surprisingly little they can do in the OIC process, beyond helping a taxpayer to prepare their financial statement and making a few phone calls. That means firms specializing almost exclusively in settlements should raise immediate red flags, says Linfield, who cautions that there is "no secret recipe here."

#### So what can you do?

Each year, the IRS accepts about 3 million installment agreements. Unlike an offer in compromise, installment agreements aren't about forgiving a taxpayer's debt, but they do allow the taxpayer to hash out a realistic payment plan with the government.

According to many practitioners, taxpayers should try to reach a settlement agreement on their own, although they may want to hire an accountant or attorney if the amount is relatively high or if they are unable to make progress with the IRS.

While the financial analysis for determining the terms of an installment agreement are the same as an OIC, the taxpayer has one key advantage -- leverage.

"The IRS wants to encourage settlement," says Pagano. "Although the financial standards are the same (as with an OIC), the taxpayer is in a better position to negotiate an installment agreement."

Taxpayers who opt to pay their debt in installments may be able to convince the IRS to let them maintain a slightly more expensive lifestyle than what the government typically allows. Those taxpayers who need help making their case should avail themselves of the IRS ombudsman and the National Taxpayer Advocate, two independent offices set up within the government to help consumers navigate IRS bureaucracy.

But before consumers sign on the dotted line of an installment agreement, they should be aware of the consequences of default. A default on just one monthly payment could allow the IRS to demand repayment in full, warns Pagano.

### What if you've already used a tax debt resolution firm?

As early as 2004, the IRS issued a consumer alert warning that "unscrupulous promoters" were preying on consumers with tax troubles by advertising unrealistic services that only ended up costing their customers time and money, delivering nothing in the way of relief.

According to Linfield, the problem is widespread and growing, with scam artists focusing largely on the middle class.

"The tax settlement industry is just another shade of the debt settlement industry," Linfield says. "That's a conclusion regulators are quickly coming to, and it won't be long before a lot of these firms are swept into the regulatory regimes of the states."

In the meantime, the industry hasn't escaped the attention of law enforcement officials. Several months ago, the attorneys general of 18 states settled a dispute with JK Harris & Co., which bills itself as the largest tax resolution company. The agreement requires JK Harris, which did not admit any wrongdoing, to pay \$1.5 million in restitution and change its advertising practices.

While most consumers won't get their money back from a tax specialist who failed to deliver, Linfield urges them to keep written records of their correspondences with the companies. She also suggests contacting your state regulator, attorney general or the FTC if you think you've been the victim of a scam.

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