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President's Advisory Panel on Federal Tax Reform

I truly appreciate the opportunity to comment.

I am an individual, but this comment is on behalf of my husband who was in a general partnership until the combination of a bad partner and the IRS destroyed our business, our financial life, and almost cost my husband his life.

I would like this posted as a business comment, as it pertains to the discriminatory policies of the IRS against partnerships.

I know that this is longer than it is supposed to be, but only by explaining all the circumstances, can the magnitude of what has happened to us and to others, be comprehended.

I would welcome any communication from anyone that has any viable solutions that I have not exercised.

Thank you for your time.

Sincerely,
Jennifer

PRESIDENT'S ADVISORY
PANEL
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Dear Advisory Panel Members,

The Offer In Compromise program, and the Restructuring and Reform Act of 1998 were giant steps in an effort to provide taxpayers a fresh start, bolster voluntary compliance, and improve public confidence.

Unfortunately, the complexity and ambiguity of the Internal Revenue Code regarding Offers has not been adequately simplified or clarified to facilitate the **under trained** and overworked IRS "specialists" to try and achieve the overall mission of the Offer In Compromise.

The Conference Report Senate Amendment to HR 2676 states : "The amendment provides that the IRS will adopt a liberal acceptance policy for Offers In Compromise to provide incentive for taxpayers to continue to file tax returns and continue to pay their taxes."

But in reality, applications for offers are increasing, while the acceptance rate has drastically decreased.

The devastating effects on the taxpayers who attempt to utilize the program include, an increasing liability through accrual of interest and penalties, and an extension of the statute of limitations on collection while the offer is being considered; both factors result in a steady decrease in their ability to *ever* pay the liability, and achieve the "Fresh Start". Absent resolution of these problems, the taxpayers involved are falling through the cracks and suffering undue hardship, the government is not seeing the "Reasonable Collection Potential" recovered, or the intended compliance; and the result is an increase in non-compliance, or non-collectable status, which is creating a higher rate of non-productive, underground income, unemployed or welfare recipients.

The intended goals of voluntary compliance, public confidence, and taxpayer service are undermined.

The very title *Internal Revenue Service* is without a doubt the biggest oxymoron of our society, and leaving the Offer In Compromise program completely to the discretion of the I.R.S. is rather like letting the wolves decide which lambs should live!

Either the Offer In Compromise is governed by rules and law, or it is "completely discretionary"; In making it almost impossible to get accepted, the IRS has established a trap whereby applicants are compelled to provide full documentation of all assets and their location, enabling the IRS to more easily lien and levy those assets, and in turn deny the applicants the benefits that the Offer was intended to provide.

My family has suffered extreme hardship due to the contradictions within the rules governing business "Partnership" Offers In Compromise, which discriminate against individual partners (even of a dissolved partnership).

The **Due Process** policies also deny rights of individual partners as it is I.R.S. practice to consider all partners notified of delinquencies and notices of Intent to Levy, by notifying one partner.

The result is that if you are in business with an unscrupulous partner who is the financial partner, you are denied **Due Process** rights by which to protect yourself, and resolve the problem.

Once a devastating employment tax delinquency is discovered and the partnership is dissolved, and your financial life ruined, the current **Chief Counsel Opinion** is that "an

Offer on partnership liability can only be accepted if acceptable offers are secured from all partners.”

This means that although you had no knowledge of or control over the tax liability, and have suffered severe hardship due to the actions of your former partner, you are tied to that partner's level of compliance; and if that party is unwilling or unable to establish an acceptable offer, your offer will not be considered, short of offering an amount that represents the at fault partners "R.C.P" (reasonable collection potential); thereby compromising that parties liability. (In other words, he got you into this mess now you have to get him out!)

The far reaching effects of this policy are that not only is the innocent partner (my husband) held liable for the misdeeds of the at fault partner, but in the case of community property states, the spouse (myself) of the innocent partner is at risk of losing any community property, and having wages garnished, credit ruined, employment denied, and refunds held (this has happened and is happening to me).

The policy is in complete contradiction to the mission statement of the Offer In Compromise, which is to collect the greatest amount of the liability in the shortest time possible, at the least expense to the government, and to allow taxpayers a fresh start at compliance and being productive citizens.

It is understandable that offers from "in business" companies, not be allowed (as a rule), since that would afford the compromising business, an unfair advantage over "compliant" competitors.

But once a partnership is dissolved, there is no partnership to enter into an offer, and the case becomes that of individuals, and those individuals should be allowed to enter into an O.I.C. based on their ability to pay (their R.C.P.).

Consideration has been made for every other tax payer designation, to provide some sort of separation of liability; either through Trust Fund Recovery Penalty evaluation, which establishes "knowledge and control" over the tax liability for corporations; or spousal defenses for married or separated spouses, but the partnership rules have not been clearly established to protect the rights of unknowing business partners against the actions of the responsible "tax matters" partner.

Actually, there are definitive guidelines and procedures for accepting these Offers already in place within the IRC, but despite the seemingly obvious intent to allow acceptance of these offers, The IRS is standing in the way of the only means by which a damaged ex-partner can begin to reestablish his/her life. Current IRM and chief counsel opinions are disregarding the "workable" rules and making it impossible for these particular taxpayers to achieve an acceptable offer.

The use of co-obligor collateral agreements do protect the governments ability to pursue the other party of a jointly incurred liability, and these have been used successfully in the past.

IRS Rev. Proc.2003-71 Section 8. Accepting An Offer In Compromise. Paragraph .02 states: Acceptance of an offer to compromise will conclusively settle the liability of the taxpayer specified in the offer. Compromise with one taxpayer does not extinguish the liability of any person not named in the offer who is also liable for the tax to which the offer relates. The service may take action to collect from any person not named in the offer”.

The IRM has changed regarding "Partnership Offers"; When I submitted our offer on 11-13-2001, the "New" IRM 5.8.4.10.5 (11-30-2001) came out two weeks later! I have included it in the attachments that follow.

The rejection of our offer was upheld (after Appeals), on 09-16-2004, two months later the "new and current" IRM 5.8.4.13.4(11-15-2004) Offer policy on Partnership Liability was released. (also attached).

The wording of the current policy makes the prejudicial practice even more explicit, And the reference to state law is self contradictory, in that most, if not all, states' laws have been amended to reverse the "ancient common law rule", traced back to 1881 regarding the release of joint obligors.

I have included the best references to Washington State that I as an uneducated housewife could find. See RCW 4.22.060 Effect of settlement agreement. And ,Seafirst v. Erickson July 1995. (attached).

I have also included IRS Chief Counsel Technical Memorandum number 200144002, dated July 5, 2001 outlining the issue of "the service compromising with one or more general partners for the employment tax liabilities of a partnership".

All of these references point to the protection of the co-obligor agreement and the intent of the offer in compromise to allow the government to pursue any liable party not named in the offer.

I have included the previous and current IRM sections regarding Co-obligor agreements [5.8.6.1] (2001) & [5.8.6.1] (05-15-2004).

So, the question remains, why are we and so many others being denied the benefit (for ourselves, our families, and the government), that the O.I.C. was intended to provide?

The Employment taxes (940 & 941's) are not dischargeable in bankruptcy, and therefore, even after this financially ruined family goes through that nightmare, the federal tax liability will still loom over us.

When the IRS levied the company bank account, the State Dept. of Revenue, I. & I, suppliers, employees and we didn't get paid, so there was a growing list of business and personal creditors with liens and judgments against us.

I had owned my home for 12 years prior to marrying my husband, but since we had refinanced the year before this whole ordeal to pay our personal taxes, and only my husband qualified for the loan, the title to our home was in his name only, and now liened by the IRS.

I was not a "party to the liability", the company had been in business for 3 years before I married my husband, and I had no part of the company other than living in a community property state.

We currently have no income outside of my husband's V.A. disability, and are completely dependant on our families who have been supporting since our lives were destroyed (almost 4 years now).

At this point in time, I doubt anything can be done to help me and my family out of this situation, I could hope for the rule to change, reapply, pay the application fee, resubmit the 6 months documentation of expenses (although, now that many of our bills are paid by our family and the utility bills are in their names, the expense portion may not be verifiable documentation), and we have lived for 4 years without the usual luxuries such as dental care, tires, clothes that don't come from Goodwill, vitamins, over the counter medicines,

etc; etc; so that would represent an unrealistic expense picture.

Then there is the issue of suspending the statute of limitations AGAIN, the 3+ years that the Offer was being considered and appealed, has already suspended the 10 year statute of limitations on to 2014, starting the whole process over again would, if it took the same length of time, extend the S.O.L. to 2017, at which point I'll be 59 years old! In that time if we can afford to keep our home, it will most likely appreciate enough that the IRS or the state will seize it, and my family will then be homeless too.

How can it be in the government's best interest to take a family from the point of contributing thousands of dollars a year (after deductions), to being completely non productive?

We must now apply for welfare, which is something we have struggled to avoid, but we cannot continue to burden our families any longer.

We still have the imminent bankruptcy, 10 years of credit destruction associated with that, 10 years after the statute of limitations runs out on this federal liability, we will perhaps be able to reestablish our once perfect credit scores, but by that time our age will still effect it.

We will either remain totally dependant on welfare or work for the rest of our lives, with no hope of retiring.

I realize that this is far longer than anyone is probably willing to read, so I will end with this plea, *We need your help!*

The Offer In Compromise would have reconciled this problem, and we would once again be compliant, taxpayers.

I have fought to save my husband's life when the stress of this nightmare almost killed him;

I have fought to try and regain a sense of purpose to continue this battle;

Fought to learn the complex laws that pertain to this situation;

Fought to become employed, and keep that employment;

Fought to keep my home, on which we can't afford the mortgage payments, and can't get refinanced to a new, lower rate;

I fight to be allowed to keep my home, my marriage, my dignity, and hope of a future where we can again be healthy and productive and maybe even dare to dream.

My hope is that in reading this, someone can help me in my fight

I truly appreciate the time you have taken to read this, and would be forever grateful for any assistance that can be afforded us.

Sincerely,
Jennifer K.

P.S. I would welcome any input as to options I may not have exercised, laws that may have come into effect to help us or any other useful communication. (a job would help).
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