

State Bar of Michigan
Taxation Section

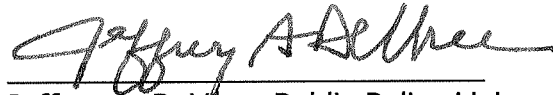
**Notice of Public Policy Position
Approved on October 6, 2005**

At the regular meeting of the Council of the Taxation Section of the State Bar of Michigan held on October 6, 2005, the Council Members and Committee Chairpersons present at the meeting approved the following resolutions:

RESOLVED that the Taxation Section adopts a public policy position in support of an offer-in-compromise program for Michigan taxes; and further

RESOLVED that the Chairman of the State and Local Tax Committee, the Chairman of the Practice and Procedure Committee, and the Legislation and Public Policy Liaison for the Council shall draft proposed legislation to establish an offer-in-compromise program, with assistance from other members of the Council and the Section, and submit it to the State Legislature for consideration.

A copy of the policy position statement is attached.


Jeffrey A. DeVree, Public Policy Liaison

Taxation Section of the State Bar of Michigan Public Policy Position Statement

Offer-in-Compromise Legislation

The Taxation Section of the State Bar of Michigan supports legislation to establish an offer-in-compromise program for state and local taxes administered by the Michigan Department of Treasury.¹

Background

Michigan law generally prohibits the compromise tax liabilities. There is an exception for voluntary disclosure agreements. These, however, are intended primarily for out-of-state businesses with Michigan tax filing obligations. There is no procedure for individual taxpayers to resolve Michigan tax liabilities for less than the full amount of the tax due.

The federal government, on the other hand, through the Internal Revenue Service, has a long-standing offer-in-compromise program for individual taxpayers in appropriate cases. Under this program, the IRS will compromise a tax liability in three circumstances:

- When there is doubt as to collectibility – in other words, considering the taxpayer's financial situation, it is doubtful that the tax liability can be collected within the period allowed by law.
- When there is doubt as to liability – in other words, under applicable law, it is doubtful that the taxpayer is liable for the tax.
- When the compromise would further the goal of fair and efficient administration of taxes.

In addition, other states recognize the benefit of an offer-in-compromise program for tax liabilities that may not otherwise be collectible.

Economic Impact of Offer-in-Compromise Legislation

Tax liabilities often go uncollected in Michigan. An offer-in-compromise program would provide an opportunity to recover a portion tax liabilities that would otherwise go

¹ This is a public policy position of the Taxation Section. The State Bar has not taken a position on the matter. The Taxation Section has 1,502 members. The position was adopted by vote of the Council of the Section on the recommendation of the State and Local Tax Committee and the Practice and Procedure Committee.

uncollected. In the long term, such a program would likely increase the amount of tax collected, both in total, and on an annual basis. In the short term, such a program would almost certainly result in a one-time infusion of tax revenue. An offer-in-compromise program thus presents a very rare opportunity to increase revenue without raising taxes or fees.

Social Impact of Offer-in-Compromise Legislation

Fresh Start. An offer-in-compromise program is good tax policy not only because it will likely increase tax revenue, but also because it offers social benefits. In much the same way that federal bankruptcy law provides an opportunity for a “fresh start” generally, the offer-in-compromise program under federal tax law allows financially struggling taxpayers a “fresh start” with respect to federal tax liabilities. An offer-in-compromise program would do the same for Michigan taxpayers with respect to Michigan tax liabilities.

In many cases, a taxpayer will go through a bankruptcy, and concurrently enter into an offer-in-compromise agreement with the IRS to resolve federal tax liabilities that are not dischargeable in bankruptcy. Although the taxpayer has resolved all other debts, however, the State of Michigan will continue to seek full payment of an outstanding Michigan tax liability, including penalties and interest. This often merely prolongs the taxpayer’s financial crisis, and delay the taxpayer’s fresh start, without producing any significant tax revenue. Therefore, it is not only inconsistent with federal law and federal tax policy, but also ineffective.

Fair and Efficient Tax Administration. Most Michigan taxes, like most federal taxes, are voluntary, *i.e.*, self-reporting, in nature. As such, they depend on public confidence in the basic fairness of the tax system. An offer-in-compromise program would likely further such confidence. Taxpayers would know that they have both a legal obligation to pay taxes, and a legal opportunity to compromise a tax liability if (1) they are financially unable to pay the full amount, (2) they have a strong argument under applicable law that they are not liable for the tax, or (3) as a result of unusual circumstances, collection of the full amount would create undue economic hardship or would be otherwise unfair.

An offer-in-compromise program would also make the Michigan tax system more efficient. The federal program requires a minimum offer equal to the amount that the IRS can reasonably expect to collect from the taxpayer. A typical offer also includes an additional amount that the IRS could not otherwise collect, *e.g.*, a contribution in the form of gifts or loans from friends or family members. This makes more efficient use of collection resources by securing voluntary payments, including revenue from sources that would not otherwise be available. The federal program also requires future compliance with all federal tax requirements. This brings taxpayers out of “hiding” and

back into the tax system. An offer-in-compromise program would have a similar effect in Michigan.