



MAINE REVENUE SERVICES
Compliance Division
PO Box 1060
Augusta, ME 04332-1060

Rapid Delivery for Courier and Package Delivery Services:
Maine Revenue Services
Compliance Division
51 Commerce Drive
Augusta, ME 04330

OFFERS IN COMPROMISE

Generally. The State Tax Assessor has the authority under 36 MRSA §143 to settle (compromise) any tax liability owed to the State of Maine. While anyone with an existing tax debt may submit an offer in compromise of that debt, the Assessor's authority is wholly discretionary; no taxpayer has a *right* to settle a state tax debt. A settlement must be grounded upon doubt as to liability, doubt as to collectibility or both. Please note the following:

1. "Tax liability" means all of the tax, interest, and penalties owed by the taxpayer. In some cases, it may also include certain fees and costs.
2. "Doubt as to liability" means there is reasonable doubt that you legally owe all of the tax liability that has been assessed, based upon the facts and circumstances of the specific case.
3. "Doubt as to collectibility" means there is doubt that you are able to pay the debt in the foreseeable future; or the risk that the debt will become uncollectible is sufficient to warrant acceptance of less than the full amount owed.

Requirements for submitting an offer. The following requirements must be met before your offer will receive consideration:

1. You must generally have filed all tax returns due, or show why the returns do not need to be filed. This includes both individual income tax returns and all business-related tax returns for which you are responsible. Any settlement offer received while returns remain unfiled may be returned to you without action.
2. A settlement offer based wholly or partly on doubt as to liability requires a detailed explanation and should be accompanied by documents supporting your case. Remember that the essence of doubt as to liability is that under the relevant law, there is at least a reasonable argument that you don't owe either all or part of the assessed tax.
3. An offer based wholly or partly on doubt as to collectibility requires a complete and accurate personal financial statement. If you own or control a business, you may be required to submit financial statements for

your business as well. Your statements must identify all of your income and all assets and liabilities. A financial statement later determined to be false in any material way may result in charges of perjury and may cause the agreement to be set aside and the debt reinstated.

The State Tax Assessor will never settle a tax liability if the assessor finds that the taxpayer has acted with intent to defraud. Frivolous offers and offers submitted to delay collection of tax will be rejected immediately.

Factors considered. The State Tax Assessor considers many factors in determining whether or not to accept an offer in compromise. Each case is evaluated on its own merits; Maine Revenue Services (MRS) does not employ a formula in considering offers. In one case a payment offer of 20% of the tax debt may be deemed acceptable, while in another payment of 50% may be considered in the State's best interests, and in yet a third, MRS may not settle for less than payment of all tax principal, together with some or all accrued interest – or may decide not to compromise the debt at all. When determining whether to accept a compromise offer based wholly or partly on doubt as to liability, the following factors will be considered:

1. The likelihood of the State prevailing on the issue were it to be litigated;
2. Any ambiguity in the applicable laws or rules, as demonstrated by both the laws and rules themselves and the common interpretation and application of the same among tax practitioners and/or similarly-situated taxpayers; and
3. Whether tax was collected but not remitted to the State by the taxpayer.

In addition, the following factors are important:

- Repeated non-compliance or attempts to avoid paying a tax obligation over time;
- Evidence that the taxpayer has the ability to pay the tax in full or to pay significantly more than the amount offered, either by liquidating assets, including pension funds, or by means of a payment agreement over a reasonable period of time;

- The potential for an increase in the taxpayer's earnings, the value of their assets or a decrease in expenses or the value of liabilities, particularly when collection activity has been pursued for only a limited period of time;
- The omission of information about assets or income on present or previously-submitted financial statements, or a failure to respond to requests to clarify or document information on the financial statement;
- Prior attempts by MRS to collect the tax. Generally, the longer and more thorough the history of collection activity by MRS, the more likely the collectibility of the account will be considered doubtful.

Where to send the offer: Mail the offer to the address noted below. You may attach a check payable to the Treasurer, State of Maine, together with any supporting documents.

Maine Revenue Services
Compliance Division
PO Box 1060
Augusta, ME 04332-1060

If you know the name of the examiner or agent handling your case, please include his/her name in the lower left hand corner of the envelope.

Collection actions. Merely submitting an offer **will not stop** ongoing collection operations. If your offer is based on doubt as to liability, you may request that collection operations be suspended while the offer is being considered, but the Assessor is not required to honor your request.

Acceptance or rejection. MRS may accept your offer as presented, may make a counteroffer of an acceptable amount or may reject your offer without explanation. A decision to reject your offer is not subject to administrative or judicial review under 36 MRSA §151. Generally, you will be notified of the decision by mail.

Once an agreement is reached, MRS will prepare a written agreement for your signature. When the agreement has been signed and returned, it will be authenticated on behalf of the State Tax Assessor and a copy provided for your permanent records. Keep the copy in a safe place along with evidence of payment.

Interim billing. You will remain responsible for the entire tax liability until all terms and conditions of the agreement have been met. MRS will not alter its records and normal billing will continue during the time your offer is under consideration and completion of the terms and conditions is pending.

Form and amount of offer. The offer should be submitted in the form of a letter detailing what you are offering and why you believe that acceptance of the offer is in the best interest of the State of Maine. Include the following in your letter:

1. The exact amount offered and any proposed terms or conditions associated with your offer.
2. If your offer is based on doubt as to liability, include a detailed explanation of why doubt exists and attach any available documents that show that you do not owe the amount assessed.
3. If your offer is based partly or wholly on doubt as to collectibility, attach complete and accurate financial statements. Personal financial statements include the requirements that you attach a copy of your most recent federal income tax return and, unless you are self-employed, copies of two recent pay vouchers.

Upon request, MRS will provide you with a detailed breakdown showing how much you owe by account and period. Further, a list of unfiled returns will be provided for all known accounts.

Payment. The preferred method of payment for any offer is a single payment in cash, certified or bank check or money order within 30 days of reaching an agreement to compromise a tax liability. When necessary, the terms of your offer may include installment payments over a specific period of time. Your ability to pay the debt will govern whether installment payments are acceptable.

1. Refunds, state or federal, will be offset against state tax debts. A refund received or setoff before completion of the terms and conditions of the agreement will not be counted towards the agreement amount unless specifically included in the agreement. Generally, to be included in the agreement, you must provide evidence of the amount of any expected refund.
2. Installment payments received prior to submission of the offer or while the offer is being considered may not be counted against the agreement amount unless specifically included in the agreement. Similarly, payments received from levies issued prior to receipt of your offer and received after the agreement has been reached will not be applied against the agreement amount unless specifically included in the agreement. MRS will not collect more than the full amount of tax, interest and penalty that is owed.

Responsible individuals and business successors. In some cases an individual taxpayer may be assessed as a "responsible individual" for the tax debts of a corporation, partnership or other business entity. A person who has

purchased a business that owes state withholding and sales taxes may also be assessed for some or all of those taxes if the buyer has failed to set aside money from the purchase price. In some cases, more than one person will be held responsible for the same debts and collection steps may be taken against them jointly and severally. Your offer will normally be construed to relate only to your own individual responsibility for the tax debt. If an agreement is reached in which an amount of the “responsible individual” debt remains after the terms and conditions have been completed, MRS may continue collection action against the other responsible individuals in order to recover the remainder of the debt. If you intend that your offer satisfy the debt for all responsible individuals, you must clearly state that as a condition of your offer. If acceptable to the State, this condition will be included in the agreement prepared for your signature.

Liens. Liens filed in registries of deeds or with the Maine Secretary of State will not be released until all conditions of the agreement have been met. If you need the liens released immediately upon payment, make the payment by bank check and request copies of the lien releases be sent to you.

Bankruptcy. If you are the debtor in a Chapter 7 bankruptcy proceeding, MRS generally will not consider an offer in compromise until you have received a discharge from the Bankruptcy Court. If you are in a Chapter 13 or Chapter 11 case and want to submit an offer in compromise, the matter will be referred to the MRS General Counsel.

Conclusively settled. Upon acceptance by the State Tax Assessor, your liability will be conclusively settled and neither you nor MRS may reopen the case unless there has been falsification or concealment of assets on your part or there has been a mutual mistake of a material fact.

Default. If you default on the agreement, you will be held responsible for the full amount of your tax liability including any additional interest or penalty accruals. Upon default, any payments made will be applied against your original tax liability and enforced collection measures may be used, without further warning, to collect the balance of the debt.

Examples.

Example 1: John has a history of repeatedly failing to file his tax returns, being audited and paying up only after the audit. This time, John submits an offer in compromise instead of paying the bill in full. The offer may be rejected if John’s compliance history indicates he will continue his historical pattern.

Example 2: Jane has rebuffed all collection efforts until a notice of intent to revoke her seller’s certificate is delivered to her business. Jane files an offer in compromise proposing to pay part of the amount owed two years after acceptance in full settlement of the liability. This offer may be rejected as another attempt to avoid payment of the taxes due.

Example 3: Mike is the owner and manager of Mike’s Pub. Upon being assessed by the state as a responsible person for the unpaid sales and withholding taxes, he transfers title to his house to his wife for nominal consideration; he doesn’t appeal the assessment but ultimately submits an offer in compromise, and doesn’t list the house as an asset. This offer may be rejected based on the apparent attempt to place assets beyond the state’s reach.

Example 4: Paul has a retirement account worth \$1,000,000 which is protected from his creditors but from which he is receiving monthly payments. He has the ability to withdraw funds if he chooses to pay his \$50,000 tax bill. He proposes to make an offer in compromise using funds received on a monthly basis from his retirement plan although he could pay in full by making a withdrawal. This offer is likely to be rejected based on his ability to pay in full.

Example 5: Helen has minimal assets but has a job that currently pays her \$6,000 per month with the potential for her to earn more. Her normal living expenses are \$3,500 although she is also paying \$2,500 per month for the remainder of the year to settle a Federal tax obligation. Helen’s offer in compromise on her \$50,000 tax bill is likely to be rejected, as she could make a payment agreement that would allow her to pay in full fairly quickly once her IRS obligation is met.

Example 6: Judy was the general manager and responsible officer for XYZ Inc., which has just been forced into Chapter 7 Bankruptcy. Judy is personally responsible for some unpaid sales and withholding taxes. She is also liable, as a guarantor, for most of MM’s bank debt and the bank has a lien on her home to secure this. An offer in compromise submitted by Judy at this point may be rejected as premature because of the difficulty in evaluating what her earnings will be over the next several years and the difficulty in evaluating the value of her assets until the corporate bankruptcy is completed.

Example 7: Heather submitted an offer in compromise failing to disclose her ownership of an expensive sports car. MRS discovered this during an investigation of her financial status and her offer was rejected. Heather files a new, increased, offer with a new financial statement that does list the automobile. This new offer may be rejected

because of the prior deliberate omission; the State Tax Assessor must be able to rely on the information provided.

Example 8: James submitted a financial statement, which listed monthly expenses of \$3,700 and monthly income of \$1,900 from his business and \$1,800 in gifts from friends and relatives. When asked to document the monthly gifts, James failed to do so other than to reiterate that every month he did receive \$1,800 from unnamed sources. James's offer in compromise may be rejected due to unresolved doubts about the accuracy of the information he has submitted.

Example 9: Sarah files for Chapter 7 and submits an offer in compromise. The offer will be rejected. Sarah may submit a new offer in compromise after the bankruptcy is completed. Sarah's ability to pay the taxes may be increased by the discharge of her other liabilities.

Example 10: ABC Sports Cards has been collecting but not paying over the sales tax for 2 years. They finally file delinquent returns along with an offer in compromise proposing to pay only 25% of the amount collected. Due to the nature of the tax, this offer may be rejected as not being in the best interest of the State of Maine.

CONTACT:

TELEPHONE: (207) 624-9595

FAX: (207) 287-6627