

OFFER IN COMPROMISE COMPARISON

IRS VS FTB

IRS

FTB

What is the authority for an Offer in Compromise?	26 USC § 7122	Section 19443 of the California Revenue and Taxation Code
Who qualifies for consideration to file an OIC?	A taxpayer who is unable to pay what is owed before the 10-year collection statute expires	A taxpayer who is not able to pay off liability within a reasonable period of time (typically 4 years)
What form is required to be filed?	IRS Booklet 656B	Form FTB 4905PIT for personal income tax, or Form FTB 4905BE for business income tax (both available from www.ftb.ca.gov). If a taxpayer owes MORE than one State agency (such as FTB and BOE (or EDD), the taxpayer can file the MULTI-AGENCY OIC form DE999CA.
How much needs to be offered?	For a CASH OFFER, an amount equal to the sum of the net realizable value of assets PLUS net available monthly income (gross income minus allowable expenses) times a factor of 12, or for a PAYMENT OFFER (not to exceed 24 months), the factor is 24 vs. 12. The IRS publishes (and updates annually) their COLLECTION FINANCIAL STANDARDS (that provides guidance for what they deem to be allowable expenses) that is available on the Internet.	The equivalent of the sum of the net realizable value of all assets plus 4 years of monthly payments representing the net income after allowable expenses. NOTE- the FTB has not published what they deem to be allowable expenses. Their policy is to allow all reasonable expenses that are <u>actually being paid</u> . This may include items like tithing and college for the kids. According to a printed minutes of a discussion with the FTB, their staff uses the Internal Revenue Service's expense allowance tables as a general guide. If an expense is not allowed or is reduced to an allowable amount, the taxpayer or representative is informed of the change and given the opportunity to justify the higher expense.
Is any payment of the offer amount required upon filing of a cash offer?	Yes - 20% (non-refundable) - unless the taxpayer qualifies as a low income taxpayer.	No down payment of the offer amount is required.
Is there a cost or fee to file for an Offer in Compromise?	Yes - \$150 unless the taxpayer qualifies as a "low income taxpayer"	No.
Are periodic payments of the amount this is being offered accepted?	Yes. The initial payment is submitted with your application. Continue to pay the remaining balance in monthly installments while the IRS considers your offer. If accepted, continue to pay monthly until it is paid in full.	Never. Upon acceptance of the offer, the offer amount must be paid in full.
How long is the process for the tax agency to review and either accept or reject the offer?	Typically 7-12 months (<i>longer if it becomes necessary to file an appeal to a proposed rejection</i>).	90-days
Will tax agency collection enforcement be suspended while OIC is being considered?	Always unless the collection of the tax is in jeopardy	Collection activity is not automatically suspended. If delaying collection activity jeopardizes their ability to collect the tax, they may continue with collection efforts. Interest will continue to accrue.
Will a collateral agreement be required?	A 5-year collateral agreement (where future annual payments based upon income are to be made if income rises to predetermined levels) MAY be required depending on the agency's belief that income may rise in the future. If the taxpayer is on a fixed income or has limited potential for increased earnings, a collateral agreement will generally not be required.	Same as required by the IRS
Can you appeal a proposed rejection by the agency to an OIC?	Yes. Upon receipt of the initial proposed rejection to the OIC, the taxpayer can file a timely (30 days) appeal to have their OIC reviewed by the Appeals Office. If the OIC was submitted as part of a Collection Due Process hearing, then if the Appeals Office rejects the OIC, the taxpayer can file a petition with the US Tax Court on the basis of Abuse of Discretion.	Never. If the FTB determines that it is not in the best interest of the State to compromise a liability, their decision is FINAL. There is no administrative or judicial review available to the taxpayer.
Can the OIC, once granted, be rescinded or revoked?	Yes. If the taxpayer violates any of the conditions - <i>generally future timely filing and payment requirements</i> - during the five (5) year period following acceptance, the agency can revoke the OIC and reinstate the full amount due.	Pretty much the same applies to the FTB.
Are tax liens released when an OIC is filed?	Any tax liens filed before the OIC is submitted, or during OIC consideration, will be released shortly after all conditions of the offer have been met.	The same.