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**NOTICE OF PROPOSED RULEMAKING**  
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 150  
DEPARTMENT OF REVENUE

**FILED**

10/31/2023 11:34 AM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Outlines the settlement offer process, used by the Oregon Department of Revenue, to satisfy debt.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 11/22/2023 5:00 PM

*The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.*

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HEARING(S)

*Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.*

DATE: 11/22/2023

TIME: 10:30 AM

OFFICER: Assigned Staff

REMOTE MEETING DETAILS

MEETING URL: [Click here to join the meeting](#)

PHONE NUMBER: 503-446-4951

SPECIAL INSTRUCTIONS:

Join meeting by video: <https://www.microsoft.com/en-us/microsoft-teams/join-a-meeting>

Meeting ID: 222 626 342 889

Passcode: g9hBBn

Join by phone: 503-446-4951

Conference ID: 710 729 900#

NEED FOR THE RULE(S)

The Settlement Offer rule, OAR 150-305-0090, was adopted in its current form in 2001, and contains outdated policies. The IRS has a similar program, Offers in Compromise, but Oregon's settlement offer decision often differs from that of the IRS when considering applicant's ability to pay. Rule amended to update policies, align more closely with the IRS Offer in Compromise, to remove barriers to application, and work to reduce rates of denials.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

IRS Offer in Compromise <https://www.irs.gov/payments/offer-in-compromise>,

IRS Internal Revenue Manual for Offer in Compromise [https://www.irs.gov/irm/part5/irm\\_05-008-](https://www.irs.gov/irm/part5/irm_05-008-)



## Settlement Offer ¶

(1) As used in this rule:¶

(a) "Settlement offer" means an offer made by a taxpayer or an authorized representative to satisfy a self-assessed tax liability or tax liability on which appeal rights have expired. Ability to pay" means the amount the department determines the taxpayer can pay towards their tax liability based on the taxpayer's financial condition calculated during the settlement offer process and an evaluation of any special circumstances relating to expenses, income, and assets the taxpayer may have included in their application.¶

(b) "Active settlement offer" starts at the point a settlement offer has been submitted to the department and ends with the cancellation of the balance under ORS 305.155.¶

(c) "Approved settlement offer" means a settlement offer that has been accepted by the department but is not yet a completed settlement offer.¶

(d) "Completed settlement offer" means a settlement offer that has been accepted by the department and for which, final payment of the offered amount has been made.¶

(e) "Tax liability" means one or more tax years and programs received, and the department has processed a cancellation of the balance under ORS 305.155.¶

(2e) A "Settlement offer" must be made in good faith. Fraud or misrepresentation on the part of the taxpayer or authorized representative may invalidate a settlement offer or a completed settlement offer means an offer made by a taxpayer or an authorized representative to satisfy a tax liability for less than the full amount owed, for which appeal rights have expired and there is no pending appeal.¶

(f) "Tax liability" means the amount owed to the department, including taxes, penalties, and associated interest and fees.¶

(3g) Prior to making a settlement offer, a taxpayer must be in compliance with filing requirements for all tax years and tax programs administered. "Taxpayer" means an individual owing a tax liability to the department.¶

(h) All references to the IRS Financial Analysis Handbook, Offer in Compromise calculation, and Collection Financial Standards are to those versions in effect as of December 31, 2023.¶

(2) The department reviews all settlement offer applications and may accept or reject the offer based on the department's evaluation of the taxpayer's ability to pay and the anticipated costs of further collection work.¶

(a) Anticipated costs of further collection work include, but are not limited to, whether or not timely, or when, in the absence of a return, an assessment issued by the department under ORS 305.265(10) is considered correct and final by the taxpayer and the department, costs the department incurs to collect the debt such as legal costs, transcribing warrants to other states, occupational license suspensions, and other collection related costs.¶

(b) During the settlement offer application review process, the department may also evaluate whether other collection actions such as cancellation, payment plans, suspended collection status, or temporary uncollectible status, may better address the taxpayer's ability to pay their tax liability.¶

(43) For settlement offers submitted on or after October 1, 2001, a taxpayer will only be allowed one completed application requirements:¶

(a) A taxpayer may apply for settlement of tax liabilities owed to the department by completing and submitting the "Settlement Offer for which the 3-year future compliance requirement" form provided by the department. This form includes a calculation method designed to result in an acceptable settlement under subsection 10 has been satisfied offer based upon a standard formula determined by the department.¶

(5b) The settlement offer must be accompanied by a cashier's check or bankable funds in an amount nonrefundable payment equal to five percent of the total offer settlement offer amount. This five percent payment will be deposited applied to the credit of the taxpayer's tax liability as part of the offer. This payment will not be refunded, even if the offer is not accepted. The taxpayer or authorized representative may withdraw their offer prior to the department or is withdrawn. Settlement offer payments can be made by using one or more of the forms of payment listed in OAR 150-305-0193.¶

(c) A settlement offer must be made in good faith. Fraud or misrepresentation on the part of the taxpayer or authorized representative may invalidate a settlement offer application or a completed settlement offer.¶

(d) Prior to submitting a settlement offer application, a taxpayer must file all required reports or returns for the current tax year and the three tax years (12 quarters or 36 months) acceptance or rejection of the offer. The 5 percent payment will be refunded in such cases.¶

(6) The offer must be made by completing the "Application for Settlement" for reports or returns required to be filed more frequently than annually) immediately preceding the date of the settlement offer application.¶

(4) When a taxpayer has been found personally liable for tax liabilities owed by a business, the taxpayer may include these tax liabilities in the settlement offer if the business is closed and the taxpayer provides proof of dissolution such as Articles of Amendment/Dissolution from the Oregon Secretary of State. Once a settlement

Offer" form provided by the department. This completed, the taxpayer making the settlement offer is no longer personally responsible for the tax liability, but the business and any other responsible officers form includes a calculation of an acceptable employees will remain liable for the outstanding balance of the tax liability. ¶

(5) Bankruptcy: ¶

(a) If a taxpayer is currently part of an open bankruptcy case, the taxpayer may not apply for the settlement offer, based upon a standard program until a discharge order is entered formula determined by the department. ¶

(7) A settlement offer will be review the case is dismissed. ¶

(b) If a taxpayer files bankruptcy after an approved settlement offer, the settlement offer agreement will be paused until a discharge order is entered by or the department and accepted or rejected based on the department's evaluation of the taxpayer's ability to pay and the anticipated costs case is dismissed. If the debt is discharged in bankruptcy, the taxpayer will send a copy of the order of discharge to the department. If the debt was discharged, the department shall cancel the debt according to the discharge order of the court. If an approved settlement offer is paused due to a bankruptcy filing and the debt was not discharged, the term of further collection work. Examples of facts and circumstances that may indicate the lack of an "ability to pay" include but are not limited to: ¶

(a) The taxpayer's sources of income or assets are negligible in comparison to the outstanding liability the original approved settlement offer will be extended beginning with the date of the discharge or dismissal, for a term equal to the time that the approved settlement offer was paused. ¶

(6) Non-finalized liabilities: If the taxpayer seeks to include any liability in the settlement offer application that is not final, such as occurs when an audit is open or a taxpayer amends a return before a settlement offer is completed, the department will deny the settlement offer application. The taxpayer may reapply once the liability is finalized. ¶

(b7) The taxpayer owns assets that, in total, are worth less this allowed one active settlement offer at a time. ¶

(8) Income and expense qualifications include income, expenses, and assets of the taxpayer and the settlement offer. ¶

(c) The taxpayer demonstrates an inability to pay the account with taxpayer's household and must be reported to the department in the manner prescribed by the department in its forms, instructions, and this rule. ¶

(a) Income: ¶

(i) All household income must be listed on a settlement offer application. The department considers all sources and types of income when determining two years the taxpayer's ability to pay. ¶

(dA) The taxpayer qualifies under "hardship" guidelines based on the financial statement income totals are established using the method outlined in the IRS Financial Analysis Handbook for verifying financial information. ¶

(eB) The taxpayer verifies an inability to borrow sufficient funds to pay the liability in full. Verification may be made by providing denial lett department follows the IRS Offer in Compromise calculation for income qualifications to determine the total income that the department will consider when determining the taxpayer's ability to pay. ¶

(ii) If the taxpayer believes that certain income should not be considered by the department when determining the taxpayer's from lenders, providing a work history and ability to pay, the taxpayer may provide an explanation to the department for consideration. The department may credit refer request documentation to substantiate the claim. ¶

(b) Expenses: ¶

(f) The taxpayer has little or no equity in personal assets, such as stocks, bonds or dividends; retirement funds; automobiles, truck, trailers or other vehicles; or equipment. ¶

(g) The taxpayer has little or no equity in real property, such as a personal residence, fAll household expenses must be listed on a settlement offer application. The department considers all sources and types of household expenses when determining the taxpayer's ability to pay. ¶

(A) Expense totals will be established using the method outlined in the IRS Financial Analysis Handbook for verifying financial information and shared expenses. ¶

(B) The department follows the IRS Offer in Compromise calculation for expense qualifications to determine the total expenses that the department will consider when determining the taxpayer's ability to pay. ¶

(ii) A taxpayer may claim living expenses according to the IRS Collection Financial Standards based on the taxpayer's household size. If expenses exceed the standard, houseboat or bare land. ¶

(8) A settlement offer will be deemed accepted when the department sends its written notification to the taxpayer or authorized representative. In the event an offer is rejected, the taxpayer or authorized representative will be promptly notified in writing then the taxpayer must submit an explanation to the department for consideration but does not guarantee the department will allow the expenses. The department may require documentation to substantiate any expense amount above the IRS Collection Financial Standards. ¶

(iii) Taxpayers may claim other expenses not specifically covered under the IRS Collection Financial Standards categories by submitting an explanation to the department for consideration, however this does not guarantee

the expense will be allowed by the department. The department may require documentation to substantiate the claim. ¶

(9c) If the settlement offer is accepted, the taxpayer must pay the balance of the offered amount within 10 days of the date of the letter notifying the taxpayer of the acceptance. An election can be made Assets: ¶

(i) All assets must be listed on a settlement offer application. The department considers all types of assets when determining the taxpayer's ability to pay. ¶

(A) Asset value totals are established using the method outlined in the IRS Financial Analysis Handbook for verifying financial information. ¶

(B) The department follows the IRS Offer in Compromise calculation for asset totals to determine the total asset value that the department considers when determining the taxpayer's ability to pay. ¶

(ii) If the taxpayer believes that certain assets should not be considered by the department when determining the taxpayer's ability to pay, the balance in no more than six equal monthly installments. Payment must be in bankable funds. ¶

(10) The terms of the settlement offer include but are not limited to: ¶

(a) The taxpayer agrees to waive any appeal of the assessment of the tax liabilities that are the subject of the settlement offer under the provisions of ORS 305.280(3); and taxpayer may provide an explanation to the department for consideration, however this does not mean the asset will be excluded from the ability-to-pay calculation. The department may require documentation to substantiate the claim. ¶

(iii) Real property equity calculation: ¶

(A) The department considers the value of real property owned by the taxpayer or in which the taxpayer has an interest in determining the taxpayer's ability to pay. ¶

(B) The value of real property is determined using the method outlined in the IRS Financial Analysis Handbook for real estate. ¶

(C) The department follows the calculation for real property described in the IRS Offer in Compromise to determine the real property equity that the department will consider when determining the taxpayer's ability to pay. ¶

(iv) Motor vehicle, aircraft, and vessel (boats) allowance calculation: ¶

(bA) There is a 3-year future compliance period during which the taxpayer must file all tax returns that are due and must pay all amounts that have been assessed. The taxpayer must pay the amounts that have been assessed within 90 days of the date of the assessment unless paragraph (c) of this subsection applies. This compliance requirement includes all tax programs administered by the Oregon Department of Revenue. This 3-year compliance period begins when the department considers the value of these types of vehicles in determining the taxpayer's ability to pay. ¶

(B) The department determines the value of these vehicles using the method outlined in the IRS Financial Analysis Handbook for motor vehicles, aircrafts, and vessels. ¶

(C) The department follows the IRS Offer in Compromise calculation in determining the amount of the taxpayer's equity value in vehicle(s), aircrafts, and vessels that the department will consider when determining the taxpayer's ability to pay. ¶

(v) Retirement account asset calculations: ¶

(A) The department considers the value of retirement account assets in determining the taxpayer's ability to pay. ¶

(B) The department determines the value of retirement account assets using the method outlined in the IRS Financial Analysis Handbook for retirement or profit-sharing plans. ¶

(C) The department follows the IRS Offer in Compromise process to determine retirement account assets. ¶

(9) Terms and conditions of an approved settlement offer include, but are not limited to: ¶

(a) With regards to any tax liability subject to the settlement offer, an agreement by the taxpayer to waive any right of appeal; ¶

(b) Agreement by the taxpayer to file all (required reports and returns while making payments on their settlement offer and for the five subsequent taxpayer makes final payment of the amount offered. ¶

(c) The taxpayer is not required to pay all amounts due years (20 quarters or 60 months for reports or returns that required to be filed more frequently than annually) beginning with the date on which the final settlement offer payment is made; ¶

(c) An agreement by the taxpayer to pay any additional amounts assessed by the department during an active settlement offer within 90 days of the date they are of the assessed ifment unless the taxpayer files an appeal within 90 days of the assessment date. A taxpayer who files an appeal within 90 days of the assessment date must pay all amounts that are determined to be due within 90 days after the taxpayer's appeal rights have been exhausted or have expired and the liability has become final. ¶

(d) An This requirement includes assessments issued for all tax programs administered by the Oregon Department of Revenue; ¶

(d) Agreement by the taxpayer to pay the amount determined to be due under paragraph subsection (c) of this

~~subsection must be paid within 90 days after it has become final, even if the appeal is finally resolved after the 3-year compliance period in subsection (b) of this section has expired.~~¶

~~(10) In the event that any of the requirements set forth in subsection (10) are violated, 9) of this rule are not met, the approved settlement agreement will become null and void, the full amount of the liabilities that were the subject of the settlement offer will not be cancelled, and collection activity may be reinstated on the full amount of the liabilities that were the subject of the offer.~~¶

~~(11) Even after the department's acceptance of a settlement offer, but before the taxpayer makes payment in full of the settlement offer amount, the department may continue to offset any refunds or sums due to the taxpayer from the department, any other state agency, or the federal government against delinquent accounts owed by the taxpayer.~~¶

~~(12) The department will release any tax liens related to tax liabilities included in the settlement offer agreement once there is a completed settlement offer. See OAR 150-305-0190 for settlement of disputed tax liabilities under ORS 305.155 and this rule.~~¶

~~(13) The taxpayer must affirm in the manner prescribed by the department that all information provided by the taxpayer or taxpayer's authorized representative during the settlement offer process is, to the best of the taxpayer's or taxpayer's authorized representative's knowledge, true, correct, and complete. The department may use credit reports and other tools to verify the information.~~¶

~~(14) The department's determination related to the settlement offer is final. However, the taxpayer may apply for a new settlement offer, except as otherwise limited by this rule.~~

Statutory/Other Authority: ORS 305.100

Statutes/Other Implemented: ORS 305.155