

E. MARTIN DAVIDOFF & ASSOCIATES

CERTIFIED PUBLIC ACCOUNTANTS

E. Martin Davidoff, CPA, ESQ.

353 Georges Road - Suite K
P.O. Box 835
Dayton, NJ 08810-0835
EMDCPA@aol.com

TEL: 732-274-1600

FAX: 732-274-1666

OFFERS IN COMPROMISE/CLOSING AGREEMENTS IN NEW JERSEY

As many of you know, the Internal Revenue Service has increased dramatically its Offers in Compromise Program. This is a Program which, in effect, is means tested amnesty. That is, an individual pays to the Internal Revenue Service as much as the individual is able to pay based solely on that individual's income, net worth, and other factors impacting on ability to pay. This is always an amount that exceeds the "collection potential" of the case. The IRS philosophy is let's get the money now from the Taxpayer voluntarily rather than expending efforts to collect the same or lesser amount later. It has been a terrific revenue generator for the Internal Revenue Service and has given many Taxpayers a new lease on life.

In some respects, New Jersey has imitated the Federal program by using its authority under Closing Agreements. Unfortunately, in practice, the program is not working effectively in my opinion. Based on the information I have received, New Jersey is processing between 25 and 50 Offers in Compromise per month. The Internal Revenue Service, in the same geographical area (New Jersey) is processing over 300 cases per month.

The difference in the programs, in practice, is very simple. The Federal program looks to maximize a collection potential as the primary guideline. That is, if the Taxpayer can pay \$10,000, the IRS will accept that as an Offer in Compromise whether the tax is \$11,000, \$110,000, or \$1 million. New Jersey, on the other hand, uses the amount of tax due (exclusive of interest and penalties) as the principal factor in determining an acceptable Offer. Thus, the Taxpayer who owes \$100,000 in taxes and has a maximum collection potential of \$10,000 will **NEVER** be in a position to satisfy the tax lien.

In speaking to New Jersey administrators, they point out as the reason for their policy is if they find that Taxpayers lie in their financial statement submitted with respect to Offers in Compromise. To me, this is just an excuse for not coming up with an effective policy. Taxpayers who lie and make misrepresentations should feel the full wrath of the State. However, that should not be used to undermine Taxpayers who have got into a troublesome situation, are likely to be compliant going forward, and who clearly do not have the means to pay the full amount of tax.

I am asking this Committee today to work with the Division of Taxation administratively, or legislatively, to adopt an Offer in Compromise program which will be based upon ability to pay as the primary factor, identical to the policies adopted by the Internal Revenue Service. I will even take my recommendation one step further in that New Jersey should be working with the Internal Revenue Service with respect to Taxpayers who owe both the IRS and the New Jersey Division of Taxation monies. Joint Offers should be encouraged so that Taxpayers will not be whipsawed between two tax agencies trying to maximize collection potential while often ignoring the Taxpayer's obligation to the second tax agency.