

What happens if I cannot pay my tax bill in full by the deadline?

If you cannot pay your taxes in full by the deadline to file an extension for your tax return, you will receive a notice from the IRS reporting the amount you owe, plus penalties and interest. This initial notice starts the IRS collection process, which will continue until you either pay the IRS everything it is owed or the IRS is no longer legally able to collect the tax from you, such as when the statute of limitations on collections expires.

If I cannot pay the tax I owe by the deadline, will there be penalties?

Yes, there is a specific penalty under Internal Revenue Code (IRC) section 6651(a)(2) for failing to timely pay taxes owed. This penalty is in addition to interest that the IRS will also assess against you for failing to timely pay. The interest on what you owe compounds daily, whereas the late payment penalty compounds monthly.

If I cannot afford to pay the tax I owe by my tax deadline, should I wait to file?

As counterintuitive as it may seem, it is actually beneficial to file your return on time (for a number of reasons), even if you cannot afford to pay the tax owing. The reason for this is that the penalty for failing to file a tax return, under IRC section 6651(a)(1), accrues at a much faster rate than the failure to pay penalty, under IRC section 6651(a)(2), discussed above.

Consider the following example: Alice finds out the day before the April 15 tax deadline that she will owe \$20,000 in tax. Alice believes that she will be able to pay this \$20,000 in a few months, so she decides to wait to file her tax return until after the deadline. Ultimately, the return is filed in late August. By failing to timely pay, Alice will accrue approximately \$400 in failure to pay penalties; however, by waiting to file the return, she will also accrue \$4,000 in failure to file penalties. The latter penalty could easily have been avoided if Alice had filed her tax return by the April 15 deadline, despite owing money on it. It should be noted that these amounts do not include interest that would accrue on the tax and penalties.

For similar reasons, it does not make sense to “hoard” cash until you can pay in full—from the perspective of reducing penalties and interest, it almost always makes sense to pay as much as you can as soon as possible.

How long can the IRS collect taxes from me?

As a general rule, IRC section 6502 provides that the IRS has ten years from the date tax is assessed to collect it. Many of our clients contact us several years after they first owed tax, asking how it is possible that the IRS is still allowed to collect against them. Although this ten year rule may appear simple, there are many events that can toll (i.e., suspend) the ten year statute of limitations from running. Some events that toll the collections statute of limitations include bankruptcy, a pending installment agreement, a terminated installment agreement, a pending Offer in Compromise, filing a request for Innocent Spouse Relief, being out of the country for significant period of time, and filing a Collection Due Process Hearing request. Additionally, the type of tax debt and when the tax was actually assessed may impact the collection statute of limitations as well. Many taxpayers confuse the date of assessment with the year of tax. For instance, if Alice files her 2017 tax return on April 15, 2018, and it is assessed that same day, the statute of limitations on collections would be ten years from April 15, 2018, not ten years from December 31, 2017.

Taxpayers should be careful with their communications with the IRS when they believe the statute of limitations on collections is about to run or will run soon. It is an unfortunately frequent occurrence, that a taxpayer causes one of the above-referenced events to occur when the statute of limitations on collections is about to expire.

Can I setup a payment plan with the IRS for my balance owed?

The IRS does allow taxpayers to set up payment plans, which it refers to as Installment Agreements (IA). A full-pay IA is one in which the taxpayer, by timely making all of their scheduled payments, will pay off everything that they owe (i.e., tax, penalties, and interest) by the statute of limitations on collections. A partial-pay IA is one in which the taxpayer is paying as much as they can afford to pay (according to the IRS's national collection standards), but, nevertheless, will be unable to pay the IRS in full by the statute of limitations on collections. Unfortunately, setting up an IA can be very difficult to do with the IRS (though for certain dollar amounts, you can set one up over the phone or online), and taxpayers often request the help of a professional to setup an IA that has favorable terms and results in as little being paid as is possible. financial situation.

If an installment agreement is the desired collection alternative, then getting into one as soon as possible can be beneficial to the taxpayer, as the IRS reduces the accrual rate on the IRC section 6651(a)(2) failure to pay penalty to .25% per month, though it still maxes out at 25%.

I have heard about negotiating my IRS bill down—is that an option?

It is possible to mitigate the amount you owe to the IRS in certain situations; however, it is not as easy as many advertisements on television make it seem. One such method is through an Offer in Compromise (OIC), which allows you to settle your tax debt for less than the full amount you owe. This can be a legitimate option if you cannot afford to pay your tax bill in full or doing so would create an undue financial hardship. Unfortunately, it is not as simple as negotiating—instead, the IRS uses a formula for determining how much you can afford to pay them. This formula takes into account your ability to pay, income and expenses, and the equity in your assets. The part of the formula dealing with the equity in your assets is often the reason people do not qualify for an OIC.

The process of preparing and filing an OIC can be an onerous one, with lots of forms, financial disclosures, and waiting required. Once submitted, the IRS will not try and collect tax from you; however, it can take many months, or sometimes more than a year, for them to respond. Additionally, before you can submit an OIC that has any chance of success, you must be current with all your tax filings and payments. The IRS's website offers a tool to see if you qualify for an OIC; however, it often does not work with taxpayers whose situation is more complicated than the tool is designed to assess.

Even if you do get an OIC accepted, there can be problems such as how to pay the amount you propose to offer. The IRS has different methods for payment, depending on the taxpayer's situation, such as a lump sum cash payment or a periodic payment.

Offers in Compromises are a very serious option to consider, and should not be filed lightly, as they can have severe consequences on the statute of limitations for collections (discussed above). Further still, if you do not remain compliant with your taxes for five years following the acceptance of your OIC, the IRS will hold you in default of your OIC terms and you will owe the full amount again. Consider speaking with a professional if this is something you are interested in pursuing so they can apprise you of the chances of success and what to expect.

I do not mind paying what I owe the IRS, but can I get out of the penalties and interest?

This is a common question. If this is the first instance where you owe the IRS money, it may be very simple (just a phone call) to remove all or at least some of the penalties for failure to file and failure to pay, under IRC sections 6651(a)(1) and (2). However, if you have multiple instances of noncompliance, it can be more difficult. In the latter case, the most common option is to file a request for penalty abatement. This is a statement that explains why the penalties assessed against you are the result of reasonable cause and circumstances beyond your control. Unfortunately, the IRS can take a long time to process these, and requests of this nature often have to get resolved at the Appeals level of the IRS. Speak to someone familiar with this process to determine if the facts of your case constitute reasonable cause.

Can I file bankruptcy to get rid of my taxes?

Some taxes are dischargeable, but the overall decision on whether to file a bankruptcy should be made in conjunction with an experienced bankruptcy attorney. That being said, under Title 11 of the United States Code in sections 523 and 508, the general rule is that for taxes to be dischargeable in a bankruptcy, the tax returns at issue must have been due (including extensions) more than three years ago, the returns must have been filed within the last two years, and the tax must have been assessed for at least 240 days. There are many exceptions and nuances to these rules, so please consult with an attorney before deciding to file a bankruptcy.

Are there any other ways to mitigate what I owe the IRS?

Yes, there are, but those depend on the specific facts of your situation. If your tax liability is the result of an audit of a previous tax year, you may be able to apply for what is called Audit Reconsideration to have the liability reviewed once again—this assumes that the Audit Reconsideration will result in a better outcome than the first audit, however.

Second, if you can identify an issue with the tax return that gave you the liability, you may be able to file an amended return, however a tax attorney or CPA should assist you in making that determination, as taxpayers have a limited amount of time to file an amended return, under IRC section 6511.

Third, if your liability is the result of a joint and several liability from your spouse that you feel you should not be responsible for, innocent spouse relief, under IRC section 6015 may be an option, as well.

I have no money to pay the IRS, and I cannot afford both a monthly installment nor an OIC, what can I do?

There are situations where a taxpayer agrees that he or she owes the IRS money, but it is impossible for them to pay the IRS anything and not suffer a financial hardship. In situations like this, having your account put into Currently Not Collectible (CNC) status may make sense. While a taxpayer is in CNC status, the IRS generally will not try and collect against them. However, the trade off on this is that the IRS may file a lien against the individual and the IRS reserves the right to “check-in” with the taxpayer to see if they can afford to pay more in the future. It is not uncommon for taxpayers to “wait out” the statute of limitations on collections while being in CNC status. Once the statute of limitations on collections expires, the taxpayer will no longer owe the IRS anything.

How do I know if a full-pay installment agreement, partial-pay installment agreement, Offer in Compromise, Currently Not Collectible Status, or some other option is right for me?

The best way to know which option is right for you is to speak with a professional with experience dealing with the IRS. Additionally, the IRS has numerous forms and information available that allow a taxpayer to determine which option they qualify for, such as: Form 433-A, Collection Information Statement for Wage Earners and Self-Employed Individuals; Form 433-A (OIC), Collection Information Statement for Wage Earners and Self-Employed Individuals; Form 9465, Installment Agreement Request; and Form 433-F, Collection Information Statement.¹ These forms do a good job taking an inventory of your financial situation, but can often be difficult for people unfamiliar with the process.

How much will I have to pay every month if I setup an installment agreement?

The amount you pay under an installment agreement depends on a number of variables, such as (i) how much you owe; (ii) how much time is left on the statute of limitations on collections; (iii) if you have any savings or assets that you can liquidate or borrow against; (iv) how much money you have left over at the end of every month after expenses.

Currently, for individuals who owe \$50,000 or less, the IRS offers a Streamlined Installment Agreement Program, where the taxpayer is required to pay off the liability within 72 months or the number of months necessary to satisfy the liability in full before the collection statute of limitation expires, whichever is less. This means that if you owe \$50,000 or less, a good estimate of what you may have to pay is to divide the amount you owe by 72.² For instance, If you owe \$48,000, then your monthly payment will likely be somewhere around \$670 per month. Under this Streamlined Installment Agreement Program, the IRS may request you prepare a financial statement on one of the forms discussed below to verify your ability to pay. It likely will also request that your payments be made through direct debit, as opposed to a check. With respect to liens, if you owe more than \$25,000, the IRS may file a lien. If you have been in an installment agreement previously and defaulted it, setting up a new installment agreement under this Streamlined Program can be more difficult.

If you owe more than \$50,000, then the likelihood that your collection file will be referred out to a Revenue Officer in the field increases drastically. For those individuals, their installment agreement amount will be determined based on a financial statement provided by the taxpayer (usually on Form 433-A or some other form in the Form 433 series). This financial statement goes over the taxpayer's assets, debt, financial accounts, retirement accounts, employment income, pass-through income, and many other aspects of the taxpayer's financial well-being. The end result is that the IRS will base its determination on what a taxpayer can afford to pay off of the taxpayer's assets and income stream. The IRS may demand that a taxpayer attempt to borrow against assets before putting the taxpayer into an installment agreement. It should be noted that the IRS does allow for reasonable expenses, for housing, food, vehicle, health care, and other items. Knowing which expenses the IRS may allow a taxpayer to take and how to properly fill out the Form 433-A is key to negotiating a favorable installment agreement.

If the IRS rejects an installment agreement proposal, the taxpayer has 30 days to file an appeal with the IRS Office of Appeals, under IRC section 7122(e). Recall, however, that this does toll the collections statute of limitations.

Why do some people work their tax debt out over the phone and others have to deal with Revenue Officers in person?

As a general rule, the IRS has two systems for dealing with taxpayers who owe it money. The first is the Automated Collection System (ACS) which can be reached via telephone. Although this was setup to make getting into a collection alternative with the IRS simpler for taxpayers, it often has the opposite effect, as it can be confusing knowing what the IRS employee with whom you are speaking is requesting. Additionally, you are not assigned to one IRS employee, so each time you call, you will likely speak to someone new who will not be familiar with your situation. It is unlikely that ACS will ever call a taxpayer—the taxpayer has to call them. They will communicate with you through notices from the IRS. Despite these shortcomings, it is generally preferable to get a tax collection matter resolved with ACS, than it is to resolve it with a Revenue Officer.

¹ For more information about these forms and others like them, visit www.irs.gov

² This assumes that there is at least 72 months left on the collections statute of limitations. If there is less, than this formula no longer works as an estimate.

Revenue Officers are individuals who work out of local field offices of the IRS. They can more easily file liens and levy against taxpayers who owe the IRS money. Revenue Officers tend to be more aggressive and experienced in pursuing collections than ACS employees, and great care should be given when dealing with a Revenue Officer—they are, in fact, federal agents.

What determines whether you work with ACS or a Revenue Officer is often a matter of time and amount. Newly assessed tax debts can often be resolved with ACS before they are referred out to the field to be worked by a Revenue Officer. Likewise, the higher the amount you owe, the more likely it will be assigned to a Revenue Officer.

What if the IRS calls me demanding payment?

The IRS will not call a taxpayer to demand immediate payment. Rather, the IRS communicates via postal mail. In recent years there has been a significant rise in scams via very convincing calls from a fake “IRS agent.” If you receive such a call from an “IRS agent”, it is best to avoid responding to their demands or threats and instead call the IRS directly to find out if there truly is a tax controversy. As an additional note, the IRS will provide plenty of written notice, including an opportunity for a hearing as discussed below, before it attempts to collect payment or levy a taxpayer’s property. Furthermore, the IRS will not require a specific payment method, ask for your credit or debit card numbers over the phone, or threaten to send police or other agencies to arrest you. Therefore, calls demanding immediate payment or risk levies or even threats of imprisonment should always be approached very cautiously.

What is the difference between a lien and a levy?

A federal tax lien is a claim to a taxpayer’s current or future property, which is filed with the local recorder’s office as a matter of public record, which people can pull up and learn about online. It is not the active taking of property, which is what a levy is. A levy is when the IRS takes property, such as garnishing wages, taking money from a bank account, or seizing other assets to satisfy a debt. Although a federal tax lien is not as bad as a federal tax levy, both should be avoided. Additionally, anytime you are working on setting up an installment agreement, one of the concerns should be whether the IRS will file a lien to secure the debt it is owed. Tax liens can have a negative impact on an individual’s credit score as well.

I just received a notice from the IRS that says Final Notice of Intent to Levy?

In 1998, Congress, in an attempt to check the IRS’s power to levy and file liens, created the Collection Due Process (CDP) Hearing. This opportunity to be heard by taxpayers is supposed to occur before a levy on a taxpayer’s wages or other property occurs, and it gives taxpayers a chance to be heard before the IRS’s Office of Appeals. The determination of the Settlement Officer at the CDP Hearing, is appealable to the U.S. Tax Court.

If you have received a letter from the IRS that says Final Notice of Intent to Levy, it likely provides you with an additional form to file for a CDP Hearing. It is important that you file this form on time, as it will stay collection while your case is sent to a Settlement Officer to determine if the levy will be upheld or a collection alternative, such as an IA, OIC, or CNC status. Additionally, there may be opportunities to challenge the merits of the tax the IRS says you owe within the CDP Hearing.

I have been paying on an installment agreement for a few years, and now the IRS says it is defaulted—what happened?

Several events can default an installment agreement. Unfortunately, the IRS’s computer system is very sensitive and things that many people consider minor (such as being a day late on payment) will cause it to default an installment agreement. The most common is that you filed a more recent tax return and there was an amount due, as taxpayers must stay current on all taxes for an installment agreement to stay in effect. Another common reason is that the taxpayer did not respond to a notice for renewed financial information. For taxpayers in CNC status or in a partial-pay IA, it is not uncommon for the IRS to “check-in” every year or so to make sure that the taxpayer cannot afford to pay more. Failing to respond to these “check-in” requests can result in an IA being defaulted.

If you have questions about tax audits, tax collection, administrative appeals, collection due process appeals, tax liens, tax litigation, voluntary disclosures, innocent spouse relief, or other controversies involving the IRS or you would like more information, please contact any one of the attorneys in Helsell Fetterman’s Tax Group.

IRS Collections for Individuals

Just the FAQs

To learn more, contact our

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