**COMPARATIVE ANALYSIS OF TAXPAYER’S PRIMARY**

**OPTIONS FOR REPAYMENT OF TAX DEBT©**

William F. Kunofsky CPA JD

Law Office of William F. Kunofsky

10300 N. Central Expressway

Suite 252

Dallas, Texas 75231

Office: (214) 369-1040

wkunofsky@debtfighters.com

**COMPARATIVE ANALYSIS OF TAXPAYER’S PRIMARY**

**OPTIONS FOR REPAYMENT OF TAX DEBT©**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | **Installment Agreement** | **Offer in Compromise** | **Chapter 7 Bankruptcy** | **Chapter 13 Bankruptcy** |
| **EASE** | **Simple to complex** | **Complex** | **Complex** with many technical rules | **Complex** with many technical rules. |
| **EXTENT OF PROFESSIONAL SERVICES REQUIRED.** | Sometimes negotiated by taxpayer by telephone at time tax return filed. May be requested online by form or by taxpayer or representative after assessment with ACS or Revenue Officer. | May be negotiated by taxpayer but usually professional needed. Extensive documentation required. High failure rate. | Usually requires bankruptcy attorney experienced in tax matters. Sometimes taxpayer will attempt on own. | Should require bankruptcy attorney experienced in tax matters. Sometimes taxpayers will attempt pro-se. |
| **TOTAL AMOUNT REQUIRED TO BE PAID BY TAXPAYER** | Interest on tax and penalties continue to accrue until tax and penalties are fully paid. **IRS MAY FILE LIEN WHICH CAN HAVE DISASTROUS EFFECT ON BANKRUPTCY. Usually most expensive method.** | Payment of offer upon acceptance is payment in full unless collateral agreement requires additional payments. Collateral agreement relatively rare. Amount of offer if based on doubt of collectability is total of net equity in assets plus 12 months available income if lump sum or 24 months available income and net equity in assets if periodic payment plus filing fee. | Taxes may be discharged if no longer have priority status and not secured by lien and not SFR. Priority status if tax less than 3 years old. Nondischargeable status if taxes filed less than 2 years or priority status exists if assessed within 240 days of filing petition. | Priority tax and prepetition interest may be paid in installments in plan and 100% must be paid. May be paid in payments over not plan more than 60 months.  Post-petition interest and penalties on prepetition penalty discharged if tax discharged. Unsecured portion may be paid fraction depending on plan. Prepetition Filing of lien on taxpayer’s property makes IRS secured creditor & subjects taxpayer to post-petition interest. See Bankruptcy Code. See Judge. |
| **STABILITY OF METHOD AND TOTAL AMOUNT REQUIRED BE PAID** | IRS may withdraw and renegotiate as taxpayer’s circumstances change, and periodically IRS will ask for updated information. IRS will take enforced action if taxpayer does not act timely in payment of installments, submission of financial statement or filing tax timely. Fee of $43. Harder to reinstate. | Once accepted, a binding contract has been entered into and both parties have been bound. Terms of offer requires full compliance with estimated tax and filing requirements for 5 years after acceptance. Taxpayer who breaches 5-year compliance has original liability reassessed and interest and penalty accrued to date. | Taxes eligible for discharge are discharged with bankruptcy court’s order of general discharge. IRS may dispute whether tax year has been discharged. Method is very stable. Will not discharge 100% penalty. Won’t discharge other penalties if tax cannot be discharged. Fraud and evasion exceptions. Adversary may be needed. | Taxes, interest and penalty are discharged if not priority and plan is completed. Once plan is confirmed, debtor must fail to pay or fail to periodically report business income for plan to be dismissed. Very Stable; however, taxpayer may default and be in original condition less payments. May be used for 100% penalty |
| **LEGAL AND ACCOUNTING COST FOR CLIENT** | Least cost for professional time. However reinstatement of installment agreement may require significant time. Default may require extensive cost. Large dollar cases may be more expensive. | Time consuming and therefore expensive method. Acceptance by IRS may be doubtful, and this should be considered as part of cost. Payments normally applied by IRS if denied or returned. | Professional time may be fairly significant. Filing fee is normal $325 for Ch. 7 | Professional responsibility for Ch. 13 is extensive and can be higher than no look fees. Filing fee is $310. |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | **Installment Agreement** | **Offer in Compromise** | **Chapter 7 Bankruptcy** | **Chapter 13 Bankruptcy** |
| **SUITABILITY FOR INDIVIDUAL** | **Acceptable IF** taxpayer has no ability to pay or small amount is involved. Sometime only option. | Usually **unsuitable** due to high demands by IRS. | **Excellent** if taxes are eligible for discharge. | **Excellent** if taxpayer can make payments. May allow discharge or reduction in penalties and interest. |
| **SUITABILITY FOR BUSINESS** | **Poor but may be best option.** Cash equipment and inventory makes levy attractive. IRS will attack payroll debtor and typically allow short time for repayment. Required compliant with filing and deposit rules. | **Poor.** Calculation minimum offer requires payment of value of business. IRS will not compromise payroll taxes if debtor is still in business unless compliant. | **Very Good.** However, debtor frequently does not want to surrender or liquidate business and other nonexempt assets. Advantage exists if service business with few assets. Will not discharge 100% penalty or priority taxes. | **Now Excellent.** The limits on unsecured debt is $383,157 and secured debt is $1,149,525. Debtor is not required to turn over assets. Debtor may classify general unsecured creditors, which can provide significant flexibility. Debtor can cure defaults of debts and executory contracts including mortgages. |
| **STATUE OF LIMITATIONS** | Extends 30 days after termination and during time installment agreement is pending acceptance. Not suspended during time IA in effect. | Submission of offer adds to collection statutes of limitations the time IRS takes to process offer once deemed processable plus time in offer. Additional extensions on rejection and time in appeals. | Tolled while bankruptcy is in process. | Tolled while bankruptcy is in process plus 6 months. |
| **AUDIT & COLLECTIONS** | IRS may audit. IRS may collect after default. | IRS may audit. IRS may collect once offer denied or returned. | IRS may audit. IRS may **not collect without court permission.** | IRS may audit. IRS may **not collect without court permission.** |
| **U.S. GOVERNMENT PERSON IN CHARGE OF CASE** | Revenue officer or ACS. Revenue officer has the power to summon taxpayer, seize assets and padlock business. Federal law overrides state law. | Revenue Officer in Offer Specialist or service center. | Bankruptcy Judge makes final decisions. U.S. Trustee is responsible for sale of assets and distribution to creditors. Creditors may interview debtor at 341 hearing. Creditors may file suit in bankruptcy court. | Bankruptcy judge makes final decisions. Standing Chapter 13 Trustee distributes payments to creditors. Creditors may interview debtor at 341 hearing. Creditors may file suit in bankruptcy court. |
| **METHOD OF PAYMENT** | Usually pay monthly to IRS. Other creditors are not stayed. IRS may not allow payment to other creditors. | Lump sum or very short-term 24 month installments unless collateral agreement requires. | Lump sum or surrender and sales unless exempt. Possible combination with Chapter 13 may save assets and have better results. | Debtor proposes plan. Debtor makes payments to Standing Chapter 13 Trustee. First payment 30 days after filing/ |
| **PROPERTY KEPT BY TAXPAYER** | If no default, usually all. Must pay in full**.** | Must pay value offered, No requirement to liquidate. | Depends. See bankruptcy code for exempt non-exempt assets. | Usually all. See bankruptcy code for exempt non-exempt and secured assets. |
| **DURATION OF PAYMENT** | Statute of limitations is 10 years. Extension of time may apply for multiple circumstances that prohibit collection. | Lump sum method 20% down and five payments after acceptance. Periodic payment 24 months. Probation for 5 years. Noncompliance during five years is default. | Nonexempt assets surrendered abandoned or redeemed. Lump sum surrender unless agreement reached with trustee or redeemed. | Normally minimum of 3 years. May extend to 5 years for cause. |