

Guidelines for Offer in Compromise Program

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SECTION 1 - Guidelines for Offer in Compromise Program

1.1 Overview of Offer in Compromise Program

An Offer in Compromise is a request by a taxpayer for the Michigan Department of Treasury (Treasury) to compromise an assessed tax liability for less than the full amount. An assessed tax liability includes tax and any related interest and penalty. The Treasury Offer in Compromise program is established pursuant to Public Act ("PA") 240 of 2014, which amended the Revenue Act, PA 122 of 1941.

A taxpayer may submit an Offer in Compromise if one or more of the following grounds exist:

- a. The taxpayer has **received an Offer in Compromise from the Internal Revenue Service** for the same tax periods and tax types for which the taxpayer is requesting state relief. Only tax debt for individual income tax, under MCL 206.1 to 206.532, withholding tax, MCL 206.701 to 206.713, , and/or for corporate income tax, under MCL 206.601 to 206.699, is eligible for compromise under this ground. Taxes not imposed by the Internal Revenue Service are not subject to compromise under this ground. For example, the Federal government does not impose a sales tax. Consequently, Michigan Sales Tax is not an eligible tax under this ground.
- b. A **doubt as to the collectability** of the tax debt exists. The taxpayer must show both:
 - i. The amount offered is the most that can be expected to be paid or collected from the taxpayer's present assets and income; *and*
 - ii. The taxpayer does not have reasonable prospects for acquiring increased income or assets that would enable the taxpayer to pay a greater amount of the tax debt than the amount offered, within a reasonable period of time.
- c. A **doubt as to the liability** for the tax debt exists. Based on a review of evidence provided by the taxpayer, Treasury must determine that the taxpayer would have prevailed in a contested case if the taxpayer had appealed the assessment.

The State Treasurer has given certain divisions within Treasury authority to accept or reject an offer in compromise. Treasury may accept an offer in compromise with conditions. For instance, an accepted compromise requires a taxpayer to make timely payments under a payment plan, when applicable, and requires timely filing of future tax returns. If a taxpayer does not comply with the conditions, the compromise may be revoked and the entire tax debt may be reinstated. Treasury may then take actions to collect the full reinstated tax debt.

Under the Offer in Compromise program, Treasury may compromise all or part of any outstanding tax debt that is subject to administration under the Revenue Act.

1.2 Submitting an Offer in Compromise

1. A taxpayer must submit an offer in compromise on *Michigan Offer in Compromise* (Form 5181). The taxpayer must state on the form the amount the taxpayer offers to pay on the tax debt as a compromise, and the taxpayer must submit all documents and information requested on Form 5181.

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2. At the time of submission of the *Michigan Offer in Compromise*, the taxpayer must submit a non-refundable initial payment of \$100.00 or 20% of the taxpayer's offer listed on Form 5181, whichever is greater. Treasury will apply the payment toward the outstanding tax debt.
For example, if the offer to compromise the tax debt is \$5,000.00, the initial offer payment in the amount of \$1,000.00 ($\$5,000.00 \times .2 [20\%] = \$1,000.00$) is required.
3. An offer in compromise that does not provide all required documents and/or the correct initial offer payment, is ineligible and will not be reviewed.
 - a. Payments received with the offer in compromise submission will be applied to the taxpayer's outstanding tax debt and will not be returned or refunded to the taxpayer if the offer in compromise is considered ineligible.
4. At the time a taxpayer submits an offer in compromise to Treasury, **all of the following must be true:**
 - a. The taxpayer must have filed returns for all taxes for all outstanding tax periods. An exception to this is where the taxpayer is personally assessed as a responsible person for the underlying tax debt of a business entity under MCL 205.27a or the taxpayer is a successor to the underlying tax debt under MCL 205.27a. Refer to 1.8 of the Guidelines for the conditions on which this exception may apply.
 - b. In the case of an offer in compromise based on doubt as to liability, the taxpayer's opportunities to contest the tax debt in Treasury's informal conference process and to appeal the assessed tax liability to the Michigan Tax Tribunal or a court must have expired. An offer in compromise based on doubt as to collectability or receipt of an accepted federal offer in compromise may be submitted prior to the expiration of the taxpayer's opportunities to contest the tax debt.
 - c. The taxpayer must have been assessed for the tax liabilities specified in the offer in compromise.
 - d. The taxpayer must have no open bankruptcy proceedings.
 - e. The taxpayer must agree to all of the conditions of the offer in compromise contained in Form 5181. By signing the Form under penalty of perjury, the taxpayer acknowledges that the offer, including required documentation, is true, correct and complete to the best of the signer's knowledge and belief. To be considered eligible, Form 5181 must be signed.
 - f. Each taxpayer who is a party to the offer in compromise must personally sign Form 5181.
 - i. A Form 5181 submitted by a business entity must be signed by a representative who has authority to act on the business entity's behalf.
 - ii. A Form 5181 submitted by the estate of a deceased taxpayer must be signed by the personal representative, administrator, executor or other authorized fiduciary for the estate. A representative signing on behalf of a taxpayer that is incapacitated, legally deemed incompetent, or deceased must submit proof that the representative is authorized to sign the offer in compromise. Proof includes a durable power of attorney, order of guardianship, letter of authority from a probate court or other legally recognized document of authority.
 - g. A legally competent taxpayer who is a party to the offer in compromise must personally sign an offer in compromise even if a third-party designated

representative has been authorized to discuss the offer in compromise or receive information in connection with the offer in compromise.

5. An offer in compromise may propose the following types of payment:
 - a. payment of a lump sum amount;
 - b. payment in 5 or fewer equal monthly installments after acceptance of the offer in compromise; or
 - c. payment in equal monthly installments made over a period of 6 months to 24 months, after acceptance of the offer in compromise.
6. A taxpayer is expected to pay the entire amount of the accepted offer in compromise in as short a time as reasonably possible.
7. Acceptable payment terms are determined by Treasury and will not be limited to those proposed by the taxpayer. Payment term options are provided on Form 5181.
8. Submission of an offer in compromise does not suspend interest or penalties from accruing on the outstanding tax liability.

1.3 When an Eligible Offer in Compromise Becomes Pending

1. An offer in compromise becomes pending when the Form 5181, along with required documentation, and the required initial payment of \$100.00 or 20% of the offer, whichever is greater, is received by Treasury.
2. Treasury will not levy against property or assets to collect on the tax debt specified in the offer in compromise while the offer in compromise is pending review and decision by Treasury, except where Treasury determines that the offer in compromise was submitted solely for purposes of delaying collection of the tax debt or where Treasury determines the need to issue a jeopardy assessment.
3. Treasury will notify a taxpayer in writing by sending an *Acknowledgment of Offer in Compromise* when an offer in compromise submission is received.
4. If Treasury determines that the offer in compromise submission is incomplete or does not include the required documentation, the initial offer payment, or information sufficient for Treasury to evaluate the offer in compromise, or is otherwise ineligible for review, Treasury will notify the taxpayer and any designated third-party representative, in writing, within a reasonable period of time: 1) that the offer in compromise is ineligible for review and the reason why; or 2) what additional information must be provided in order for the submission of the offer in compromise to be considered complete and eligible for Treasury to review.

1.4 Withdrawal of an Offer in Compromise

1. A taxpayer may withdraw an offer in compromise at any time prior to Treasury's acceptance or rejection. An offer in compromise will be considered withdrawn when Treasury receives a documented request via phone call, email, letter or fax from the taxpayer or designated third-party representative withdrawing the offer.
2. The required initial payment of \$100.00 or 20% of the offer, whichever is greater, will be applied to the taxpayer's outstanding tax debt and will not be returned or refunded to the taxpayer if the offer in compromise is withdrawn.
3. Once an offer in compromise is withdrawn, Treasury may begin collection of the full tax debt.

1.5 Ineligible Offer in Compromise

Treasury will review all offer in compromise submissions to determine eligibility.

1. An offer in compromise may be ineligible for review if one or more of the following exist(s):
 - a. The required initial offer payment is not included with the offer in compromise submission.
 - b. The initial offer payment amount is insufficient, i.e., less than the greater of \$100 or 20% of the offer.
 - c. The offer in compromise submission is incomplete and does not provide all required documents and information required by Form 5181.
 - d. There is an open bankruptcy proceeding associated with the taxpayer.
 - e. The taxpayer does not provide the requisite signature. Each taxpayer who is party to the offer in compromise must personally sign Form 5181.
 - f. No offer amount is listed on Form 5181.
 - g. The taxpayer does not respond to Treasury's request for additional information needed to complete the review.
 - h. There are computed assessments:
 1. The taxpayer has not submitted required returns for outstanding tax periods. An exception to this is where the taxpayer is personally assessed as a responsible person for the underlying tax debt of a business entity under MCL 205.27a or the taxpayer is a successor to the underlying tax debt under MCL 205.27a. Refer to 1.8 of the Guidelines for when this exception may apply.
 - i. The taxpayer has not yet been assessed for the tax liabilities specified in the offer in compromise.
 1. The taxpayer has not yet filed all returns and/or all returns have not been processed and tax liabilities assessed.
 - j. For a taxpayer that is incapacitated, deemed legally incompetent, or deceased, proof of authority (as discussed in 1.2.4.f., above) to act on behalf of the taxpayer or the taxpayer's estate has not been received.
 - k. The taxpayer entered into an Audit Closing Agreement, which waives the taxpayer's right to submit an Offer in Compromise.
 - l. The period in which to contest the tax debt, including Treasury's informal conference process and any appeal to the Michigan Tax Tribunal, or court of competent jurisdiction has not expired in the case of an offer in compromise based on doubt as to liability.
 - m. The tax type is not subject to administration under the Revenue Act (Public Act 122 of 1941).
 - n. There has been no tax debt assessed by Treasury or the balance of the tax debt has been paid in full.

1.6 Acceptance of an Offer in Compromise

1. An offer in compromise is accepted when Treasury sends the taxpayer and any designated third-party representative a *Notice of Acceptance of Offer in Compromise*

letter accepting the offer in compromise.

2. **If a taxpayer complies** with the conditions of an accepted offer in compromise and pays the compromised amount in full, the offer in compromise will conclusively satisfy the tax debt included in the accepted offer in compromise.
3. A compromise with one taxpayer will not extinguish the liability of any person or entity not named in the offer in compromise that may also be liable for the tax, such as a joint filer or a responsible person under MCL 205.27a. Treasury may still pursue collection from other liable parties up to any remaining amount of the uncompromised tax debt owed.
4. Acceptance of an offer in compromise does not compromise or otherwise affect any other tax liability not specified in the accepted offer in compromise.
5. Each accepted offer in compromise will be placed on file with Treasury and will be included in a report published on Treasury's website that outlines the basis for the compromise. The report will contain, at a minimum:
 - a. the amount of tax assessed;
 - b. the amount of interest or assessable penalty imposed by law;
 - c. the terms of the compromise and the amount actually paid under the terms of the compromise; and
 - d. the grounds for the compromise.

1.7 Rejection of an Offer in Compromise

If Treasury determines that an offer in compromise submission does not meet the criteria as set forth by the specific grounds, the submission may be rejected.

1. The offer in compromise may be rejected if Treasury determines that the offer was submitted solely for purposes of delaying collection of the tax debt or where Treasury determines the need to issue a jeopardy assessment.
2. An offer in compromise is not rejected until Treasury sends a *Notice of Rejection of Offer in Compromise* letter to the taxpayer and any designated third-party representative rejecting the offer and stating the reasons for rejection.
3. Except for the opportunity for an independent administrative review by Treasury, a rejection of an offer in compromise, in whole or in part, is final and not subject to further challenge or appeal to any tribunal or court.

1.8 Revocation of an Accepted Offer in Compromise

1. Any compromise made under the Offer in Compromise program is subject to continuing review and monitoring by Treasury. Treasury may revoke an accepted compromise if any of the following occurs:
 - a. Treasury determines that the person receiving a compromise concealed from Treasury any property or sources of income belonging to the taxpayer, the estate of the taxpayer, or any other person liable for the tax;
 - b. Treasury determines that the person receiving a compromise intentionally misled Treasury by withholding, destroying, mutilating or falsifying any book, document or record or made any false statement, relating to the estate or financial condition of the taxpayer or other person liable for the tax to induce the compromise; or
 - c. The taxpayer did not comply with any of the conditions that were part of an accepted offer in compromise or did not file required returns or pay tax liabilities

after an accepted compromise within 20 days after Treasury issues a notice and demand to the person.

2. If revocation is warranted, Treasury will send the taxpayer a *Notice of Revocation of Offer in Compromise* letter revoking the compromise and reinstating the uncompromised tax debt. Treasury's letter will provide the following:
 - a. A statement of the reasons for the revocation, including any determined deficiencies;
 - b. A statement of the amount of the tax debt that is reinstated;
 - c. A statement of the amount of payments previously made by the taxpayer under the offer in compromise that are credited against the reinstated tax debt;
 - d. A statement of the amount of the remaining balance of the tax debt, including any applicable penalties and interest due.

1.9 Offers in Compromise Regarding Corporate Officer Liability and Successor Liability

A. Corporate Officer Liability

1. A taxpayer assessed as a responsible person personally liable for the tax debt of an underlying business entity under MCL 205.27a ("corporate officer liability") may submit an offer in compromise for the tax debt assessed, in accordance with MCL 205.23a and these Guidelines.
2. An offer in compromise of a corporate officer liability tax debt may only be made with regards to the tax debt as personally assessed against the taxpayer as a responsible person under MCL 205.27a, not to the tax debt as originally assessed to the underlying business entity. The grounds on which an offer in compromise may be made by such taxpayer are limited to doubt as to collectability and doubt as to liability.

A taxpayer who has been determined to be a responsible person personally liable for the tax debt of an underlying business entity under MCL 205.27a ("corporate officer liability") may submit an offer in compromise based on doubt as to collectability. The responsible person's offer will be reviewed based on the doubt as to collectability of that person's personal ability to pay under the standards set forth in section 2.3 of these Guidelines.

3. Review and any acceptance of an offer in compromise submitted for a corporate officer liability tax debt based on doubt as to liability is limited to the question of the taxpayer's personal liability derivative of the tax debt of the underlying business entity. Submission by such taxpayer of an offer in compromise based on doubt as to liability of the tax debt to the underlying business entity will be rejected.
4. An offer in compromise submitted by a taxpayer regarding a corporate officer liability tax debt will not be rejected merely because the taxpayer did not file the required returns of the underlying business entity for outstanding tax periods. The taxpayer, upon its submission of the offer in compromise, may provide documentation, a sworn affidavit or other sworn statement made under oath, which details the efforts taken by the taxpayer to facilitate or secure the filing of the outstanding returns of the underlying business entity. Treasury may waive the requirement that outstanding returns be filed as a condition of submission of the offer in compromise if it determines from the information provided that the taxpayer made reasonably diligent efforts to facilitate or secure the filing of the outstanding returns.

B. Successor Liability

1. A purchaser or succeeding purchaser of a going or closed business or its stock goods ("successor") may submit an offer in compromise for the tax liability of the successor entity established pursuant to MCL 205.27a(1).
2. A successor that complies with the escrow requirements set forth in MCL 205.27a(1) and where the Treasury was requested to provide and did provide a certificate showing the known or estimated tax liability of the selling entity for purposes of establishing an escrow account for the payment of taxes, the successor's tax liability is limited to no more than the amount of the known or estimated tax liability disclosed by Treasury and held in escrow. A successor taxpayer in this situation may submit an offer in compromise for the tax debt only on the grounds of doubt as to liability as to the liability of the taxpayer as a successor under MCL 205.27a(1).
3. An offer in compromise submitted by a successor taxpayer with regard to a tax liability of the taxpayer as a successor under MCL 205.27a(1) will not be rejected merely because the outstanding returns of the seller have not been filed with Treasury.

SECTION 2 - Guidelines for Reviewing an Offer in Compromise

2.1 Evaluation of an Offer in Compromise

Assignment within Treasury of a Submitted Offer in Compromise

1. Upon receipt by Treasury of an offer in compromise submitted on *Michigan Offer in Compromise* (Form 5181), the Form and all documents accompanying the submission will be forwarded to the Office of Advocacy Services, Offer in Compromise Section for initial processing and evaluation.
2. An offer in compromise based on *doubt as to liability* will be assigned by the Offer in Compromise Section to an appropriate area within Treasury for evaluation and determination in accordance with the guidelines concerning an offer in compromise based on *doubt as to liability*.
3. If a taxpayer submits an offer in compromise based on *doubt as to liability* as well as *doubt as to collectability* and/or an accepted federal offer in compromise for the same tax periods, Treasury will first conduct an evaluation and determination of the offer in compromise based on *doubt as to liability* before it proceeds with an evaluation based on *doubt as to collectability* or accepted federal offer in compromise.

2.2 Examination of a Doubt as to Liability Offer

A doubt as to liability does not exist where the liability for the tax debt has been established by a final decision or judgment of the Michigan Tax Tribunal or a court on the merits.

A. Considering a Doubt as to Liability Offer

1. A taxpayer must submit a completed Form 5181 along with all documentation and information the taxpayer wishes Treasury to consider in reviewing the offer in compromise based on doubt as to liability.
2. A doubt as to liability exists if Treasury concludes, based on its review of the evidence that the taxpayer would have prevailed in a contested case (an evidentiary hearing) if the taxpayer's appeal rights to contest the existence or amount of the tax liability had not expired. There must be a genuine issue of dispute as to the existence or an amount

of tax liability under law.

3. Treasury will consider and weigh the evidence provided by a taxpayer as well as information otherwise available to Treasury to determine whether doubt as to all or part of the liability exists and whether the taxpayer would have prevailed in a contested case had the taxpayer exercised appeal rights.
4. A taxpayer must demonstrate by clear and convincing evidence that the taxpayer would have prevailed in a contested case. In other words, a taxpayer must demonstrate that it is substantially more likely than not that the taxpayer is not liable for all or a portion of the tax liability.
5. An offer in compromise based on doubt as to liability must offer no less than \$100.00, even where the taxpayer claims no liability for any of the tax debt. The initial payment is required with the application, Form 5181. The amount offered may not include expected future refunds, funds attached by a levy or any amount paid prior to submission of the offer in compromise.
6. Only tax periods and assessments identified in the taxpayer's submitted Form 5181 will be considered. Assessments for other tax periods for which tax liability is not in doubt may not be included in the offer in compromise.
7. Treasury will first determine if any compliance issues are present, such as unfiled returns if required or defaulted agreements with Treasury, and if there is evidence that the taxpayer has submitted the offer in compromise solely for the purpose of delaying collection of the tax debt.
8. A determination that an offer in compromise is submitted solely for the purpose of delaying collection is appropriate in the following circumstances:
 - a. A taxpayer submits an offer in compromise that is not materially different from a previous offer that was rejected;
 - b. A taxpayer submits an offer in compromise within a short period of time after defaulting on an accepted offer in compromise; or
 - c. A taxpayer's presentation and position in support of its claim as to doubt as to liability is clearly frivolous because it is plainly unsupported by facts or law.
9. An examination of an offer in compromise based on doubt as to liability should be conducted in a manner similar to a determination of tax liability through a Treasury audit and through the application of law to the information provided by the taxpayer and otherwise available to Treasury.
10. The Form 5181 and all accompanying documents submitted by the taxpayer will be examined.
11. Conclusions made by Treasury in its evaluation of the offer in compromise for doubt as to liability will be documented and all arguments raised by the taxpayer will be addressed.
12. Treasury personnel must place into the file of each offer in compromise documentation that includes, but is not limited to:
 - a. Requests for information/documentation;
 - b. Correspondence and communications with the taxpayer and any designated third-party representative;
 - c. Results of the evaluation; and

d. Decision regarding the offer in compromise.

B. Doubt as to Liability Offer Accepted

1. If an offer in compromise for doubt as to liability is accepted, then the Treasury division assigned to review the offer in compromise based on doubt as to liability will adjust and/or correct the outstanding balance of the tax debt and will notify the Offer in Compromise Section of the acceptance. The Offer in Compromise Section will send a *Notice of Acceptance of Offer in Compromise*, letter to the taxpayer and any designated third-party representative.
2. If a taxpayer submitted an offer in compromise that was also based on doubt as to collectability, Treasury will evaluate the offer in accordance with the guidelines and standards for doubt as to collectability.
3. If a taxpayer did not submit the offer in compromise based on doubt as to liability based also on doubt as to collectability and cannot fully pay the compromised amount, Treasury may consider payment options, including use of an installment agreement, to permit the taxpayer to pay the compromised amount. However, the tax debt cannot be reduced further unless the taxpayer submits a subsequent offer in compromise based on doubt as to collectability that is accepted by Treasury.
4. Treasury will adjust the outstanding balance of the tax debt and will conduct collection consistent with the terms of an accepted offer in compromise and Treasury's standard collection procedures.

C. Doubt as to Liability Offer Rejected

1. If a taxpayer's offer in compromise based on doubt as to liability is rejected, the Treasury division assigned to review the offer in compromise will notify the Offer in Compromise Section of the rejection. The Offer in Compromise Section will send a *Notice of Rejection of Offer in Compromise* letter to the taxpayer and any designated third-party representative. The rejection letter will state the reasons why Treasury rejected the offer in compromise and that the taxpayer may request an independent administrative review by filing a written request on *Request for Independent Administrative Review of Rejected Offer in Compromise* (Form 5186) within 30 days after the date of Treasury's rejection letter.
2. Treasury may initiate collection for the tax debt after issuing the rejection letter. Once a taxpayer submits a written request for independent administrative review of the rejection, Treasury will suspend collection and may not levy against any property or assets to collect the debt while the independent administrative review is pending, unless Treasury determines that the taxpayer's offer in compromise was solely intended to delay collection of the tax or where Treasury determines the need to issue a jeopardy assessment.
3. If a rejection of the offer in compromise is affirmed by an independent administrative review, Treasury will reinstitute collection after Treasury issues notice affirming the rejection.

2.3 Examination of Doubt as to Collectability Offers

A. Considering a Doubt as to Collectability Offer

1. A doubt as to collectability exists if a taxpayer establishes both of the following:
 - a. The amount of the offer in compromise payment is the most that can be expected to be paid or collected from the taxpayer's present assets or income; and

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- b. The taxpayer does not have reasonable prospects of acquiring increased income or assets within a reasonable period of time that would enable the taxpayer to pay more of the tax debt than the amount offered.
2. A taxpayer must submit a Form 5181, along with all required documentation and the required initial payment.
3. Treasury will investigate the offer in compromise and evaluate whether acceptance is appropriate. Treasury will first determine if there is evidence that the taxpayer submitted the offer in compromise solely for the purposes of delaying collection of the tax debt. Treasury will also determine after a preliminary review of the taxpayer's submitted financial information whether the taxpayer can clearly pay the tax debt in full. If the taxpayer can clearly pay the tax debt in full or Treasury determined that the taxpayer submitted the offer in compromise solely for the purpose of delaying collection, Treasury will reject the offer in compromise and initiate collection of the tax debt.
4. An offer in compromise based on doubt as to collectability is presumed to be submitted solely for the purpose of delaying collection in the following circumstances:
 - a. A taxpayer submits an offer in compromise that is not materially different from a previous offer in compromise that was rejected, and there are no material differences in the taxpayer's financial situation from that which existed in the previous offer in compromise;
 - b. A taxpayer submits an offer in compromise within a short period of time after defaulting on an accepted offer in compromise and the taxpayer's financial situation has not materially changed since the offer in compromise was accepted; or
 - c. The taxpayer had been contacted by Treasury collection personnel and informed that Treasury would begin collection of the tax debt through levy or seizure, and the taxpayer's offer in compromise is clearly frivolous because it is significantly less than the taxpayer's net worth or household resources, and/or significantly less than the taxpayer's ability to make future payments.
5. Treasury may request from a taxpayer any additional information necessary or useful to evaluate the offer in compromise and to issue a decision of acceptance or rejection.
6. Treasury may contact the taxpayer and any designated third-party representative by phone, e-mail, or in writing to request information in order to evaluate the offer in compromise. Treasury will advise the taxpayer and any designated third-party representative of the information required, the deadline date for providing the requested information, and that the offer in compromise may be rejected if the information is not provided by the deadline date. Contacts or attempted contacts, including information requested, must be documented in the file history.
7. If a taxpayer or any designated third-party representative does not respond to Treasury's contacts or attempted contacts, Treasury will send a letter to the taxpayer and the designated third-party representative that lists the information needed, identifies the deadline date for providing the requested information, and states that the offer in compromise may be ineligible if the information is not provided by the deadline date.
8. If a taxpayer or any taxpayer's designated third-party representative requests an extension of time to comply with the request for additional information, a reasonable amount of time may be granted. Generally, a maximum of 30 additional calendar days

will be allowed. A request for an extension of more than 30 calendar days will not be granted unless it is supported by specific reasons that justify the extension. However, if it appears that the taxpayer or any designated third-party representative is delaying the progress of the investigation of the offer in compromise or does not meet the deadline, the offer in compromise will be considered ineligible.

9. An offer in compromise based on doubt as to collectability must offer no less than \$100.00. The initial payment is required with the application, Form 5181. The amount offered may not include expected future refunds, funds attached by a levy or any amount paid prior to submission of the offer in compromise.
10. An offer in compromise based on doubt as to collectability must include all unpaid tax liabilities and periods and assessments for which the taxpayer is liable.
11. An offer in compromise is effective for the entire assessed liability for tax, penalties, and interest for the periods covered by the offer. All questions of tax debt for the periods covered by an accepted offer in compromise are conclusively settled and are not subject to additional assessment or collection, unless the offer in compromise is revoked or the compromised tax is modified or adjusted as a result of information received from the Internal Revenue Service or as a result of an audit performed by or on behalf of the State of Michigan.
12. Whether doubt as to collectability exists will be based on Treasury's analysis of a taxpayer's financial condition to determine whether the amount of the payment for the offer in compromise is the most that can be expected to be paid or collected from the taxpayer's present assets or income and whether the taxpayer does not have reasonable prospects of acquiring increased income or assets within a reasonable period of time that would enable the taxpayer to pay more of the tax debt than the amount offered.
13. Treasury will follow, where applicable, the guidelines set forth in Part 5, Chapter 8, Section 5 and Part 5, Chapter 15, Section 1 *Financial Analysis Handbook* of the Internal Revenue Manual of the Internal Revenue Service and Treasury's forms, instructions and guidelines in analyzing a taxpayer's financial condition to determine whether doubt as to collectability exists.
14. The basis for each decision should be clearly evident and articulated in the case file documentation and should be supported by the known case facts, circumstances, and supporting documents. Each case will be evaluated on its own set of facts and circumstances. Treasury will follow, where applicable, the guidelines set forth in Part 5, Chapter 8, Section 5 and Part 5, Chapter 15, Section 1 *Financial Analysis Handbook* of the Internal Revenue Manual of the Internal Revenue Service when analyzing a taxpayer's financial conditions.
15. Treasury will place into the file of each offer in compromise documentation that includes, but is not limited to:
 - a. Requests for information or documentation;
 - b. Correspondence and communications with the taxpayer and any designated third-party representative;
 - c. Results of the evaluation; and
 - d. Decision regarding the offer in compromise.

B. Doubt as to Collectability Offer Accepted

1. If a taxpayer's offer in compromise equals or exceeds Treasury's determination of a compromise amount that satisfies the standards for doubt as to collectability, then Treasury will send a *Notice of Acceptance of Offer in Compromise* letter to the taxpayer and any designated third-party representative accepting the offer in compromise. The acceptance letter will state the accepted offer in compromise amount and payment method (e.g., lump sum amount, payment plan).

C. Doubt as to Collectability Offer Amended (Addendum) and/or Rejected

1. If Treasury's analysis shows the taxpayer can fully pay the tax debt by liquidating assets without incurring economic hardship (which for an individual taxpayer is defined as being unable to pay reasonable basic living expenses and which for a business taxpayer is defined as resulting in imminent insolvency) and/or by making installment payments, Treasury may reject the offer in compromise or discuss with the taxpayer withdrawal of the offer in compromise and entry into an alternative plan to pay the tax debt in full
2. Based on its analysis of a taxpayer's financial condition, Treasury may determine an amount different than the offer in compromise amount submitted by the taxpayer that Treasury would consider as an acceptable revised offer in compromise by the taxpayer. In this situation, Treasury may send an Addendum to a Michigan Offer in Compromise to the taxpayer and any designated third-party representative that states the following:
 - a. The amount of a revised offer in compromise that Treasury would consider acceptable;
 - b. The reasons why Treasury's analysis supports the revised offer in compromise as acceptable; and
 - c. That the taxpayer must notify Treasury by signing and dating the appropriate *Addendum to a Michigan Offer in Compromise* and returning within 30 calendar days of the date of Treasury's letter that the taxpayer agrees to and submits Treasury's determined amount as the taxpayer's revised offer in compromise, and that if the taxpayer does not do so, it will be deemed as a decision not to submit a revised offer and the taxpayer's submitted offer in compromise is rejected.
3. If Treasury rejects an offer in compromise, it will send a *Notice of Rejection of Offer in Compromise* letter to the taxpayer and any designated third-party representative. The letter must state that the offer in compromise is rejected, state the reasons for the rejection and that the taxpayer may request an independent administrative review of Treasury's decision by filing a written request on *Request for Independent Administrative Review of Rejected Offer in Compromise* (Form 5186) within 30 days after the date of rejection letter. Treasury may initiate collection activities after issuing the rejection letter. Once a taxpayer files a written request for independent administrative review, Treasury must suspend collection and may not levy against any property or assets to collect the tax debt while the independent administrative review is pending, unless Treasury determines that the taxpayer's offer in compromise was solely intended to delay collection of the tax or Treasury determines the need to issue a jeopardy assessment.

2.4 Examination of Offers Based on Grant by the IRS of Federal Compromise under Section 7122 of the Internal Revenue Code

A. Considering an Offer in Compromise Based on Grant of a Federal Offer in Compromise

1. A taxpayer may submit an offer in compromise of a tax debt if the taxpayer was granted a federal compromise of tax under section 7122 of the Internal Revenue Code

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for the same tax periods. Treasury may accept a taxpayer's offer in compromise on this basis if the taxpayer has otherwise satisfied all of the conditions necessary to submit an offer in compromise under section 23a of the Revenue Act, MCL 205.23a.

2. A taxpayer must submit a *Michigan Offer in Compromise* (Form 5181) along with all required documentation and the required initial payment.
3. The state assessments a taxpayer claims are affected by the federal offer in compromise must be identified on Part 2 of Form 5181. A taxpayer must include a copy of the letter or other documentation provided by the Internal Revenue Service granting the federal Offer in Compromise.
 - a. IRS Form 656
 - b. IRS OIC acceptance letter
 - c. IRS Addendum
 - d. IRS Account Transcripts
4. The federal offer in compromise granted must be for the same tax types and year(s) as the assessments included in the taxpayer's submitted Form 5181 and as accepted by the IRS.
5. The availability of an offer in compromise based on the grant of a federal offer in compromise is limited to tax liabilities for the individual income tax under MCL 206.1 to 206.532, withholding tax, MCL 206.701 to 206.713, and/or corporate income tax, under MCL 206.601 to 206.699.
6. Treasury may reject a taxpayer's offer in compromise based on the grant of a federal Offer in Compromise if:
 - a. Any of the conditions set forth in subsection A.1., above, does not exist;
 - b. The circumstances for the grant of the federal Offer in Compromise are irrelevant to or have no bearing on the taxpayer's tax debt owed to the State of Michigan;
 - c. The federal tax to which the federal Offer in Compromise relates is not comparable to the tax for which the taxpayer submits a state offer in compromise; or
 - d. The circumstances of the taxpayer that may have justified the grant of the federal Offer in Compromise are materially different from the circumstances facing the taxpayer at the time the taxpayer submits its offer in compromise. For example, if a taxpayer was granted a federal Offer in Compromise for a tax period due to the taxpayer's financial situation at the time of the grant, but the taxpayer has since won the lottery or experienced a substantial financial windfall, then Treasury may reject the offer in compromise.
7. Treasury will place into the file of each offer in compromise documentation that includes, but is not limited to:
 - a. Letter or other documentation granting the federal Offer in Compromise;
 - b. Requests for information or documentation;
 - c. Correspondence and communications with the taxpayer and any designated third-party representative;
 - d. Results of the evaluation; and
 - e. Decision regarding the offer in compromise.

B. Offer Based on Federal Offer in Compromise Grant Accepted

1. Treasury may compromise the tax debt for each year included in the taxpayer's offer in compromise by applying the same percentage granted by the Internal Revenue Service. For example, if the taxpayer's federal compromised tax liability was 35% of the total federal tax liability owed for that tax year, Treasury may compromise the taxpayer's income tax liability and accept as a compromised tax 35% of the taxpayer's total income tax liability for the same tax year.
2. Treasury also may compromise using a different percentage basis than the compromise percentage granted by the Internal Revenue Service based on Treasury's analysis and determination under the guidelines for evaluating an offer in compromise based on doubt as to collectability.
3. If Treasury accepts an offer in compromise, it will send a *Notice of Acceptance of Offer in Compromise* letter to the taxpayer and any designated third-party representative. The acceptance letter will state the accepted offer in compromise amount and payment method (e.g., lump sum amount, payment plan).

C. Offer Based on Federal Offer in Compromise Grant Rejected

1. If Treasury rejects an offer in compromise, it will send a *Notice of Rejection of Offer in Compromise* letter to the taxpayer and any designated third-party representative. The letter must state the reasons for the rejection and that the taxpayer may request an independent administrative review by filing a written request on *Request for Independent Administrative Review of Rejected Offer in Compromise* (Form 5186) within 30 days after the date of the letter. Treasury may initiate collection after issuing the rejection letter. Once a taxpayer submits a written request for independent administrative review of the rejection, Treasury must suspend collection and may not levy against any property or assets to collect the liability while the independent administrative review is pending, unless Treasury determines that the taxpayer's offer in compromise was solely intended to delay collection of the tax or where Treasury determines the need to issue a jeopardy assessment.

2.5 Additional Assessment beyond Compromised Amount Due to IRS Information or State Audit

1. A tax that was compromised under Treasury's Offer in Compromise program is subject to additional assessment or collection if the compromised tax is modified or adjusted as a result of information received from the Internal Revenue Service or as a result of an audit performed by or on behalf of the State of Michigan.
2. A taxpayer may not request an informal conference or contest Treasury's determination with respect to an offer or a compromised tax under the Offer in Compromise program in the Michigan Tax Tribunal or a court. However, a taxpayer may request an informal conference for or contest in the Michigan Tax Tribunal or a court an additional assessment to a compromised tax, which is modified or adjusted by Treasury and which is the result of information received from the Internal Revenue Service or an audit performed by or on behalf of the State of Michigan.

SECTION 3 – Procedures for Requesting an Independent Administrative Review

1. Independent administrative review of a rejection of an offer in compromise is available

upon request by a taxpayer. An independent administrative review will set aside a rejection of an offer in compromise only upon clear and convincing evidence presented by the taxpayer that the rejection was the result of fraud, adoption of a wrong principle or error of law by Treasury.

2. A taxpayer may request an independent administrative review of a rejected offer in compromise by filing *Request for Independent Administrative Review of Rejected Offer in Compromise* (Form 5186) with Treasury's Office of Legal Affairs no later than 30 calendar days after the date of Treasury's rejection letter. A request for independent administrative review will be deemed timely filed if it bears a postmark date before the 30 calendar-day deadline.
3. If a taxpayer requests independent administrative review, the taxpayer must state with particularity the grounds for the taxpayer's objections and must specify whether they relate to doubt as to liability, doubt as to collectability, or grant of a federal Offer in Compromise by the Internal Revenue Service for the same tax periods.
4. An independent administrative review will be based upon the record established by Treasury in the course of considering and rejecting an offer in compromise. Such record will include any information submitted by the taxpayer in connection with the offer in compromise as well as information otherwise available to and used by Treasury in its consideration. An independent administrative review will not consider any issue, information, or documentation that was not raised or submitted by the taxpayer or Treasury during the determination process.
5. An independent administrative review will treat as conclusive the disposition of any question of fact based upon the record established by Treasury in the course of rejecting an offer in compromise, so long as the disposition is supported by competent, material, and substantial evidence on the record. Questions of law will be reviewed de novo.
6. If an independent administrative review determines that Treasury erred in rejecting an offer in compromise, the independent administrative reviewer will overturn that decision and notify the taxpayer and any designated third-party representative. The independent administrative reviewer will direct the Treasury division that evaluated the offer in compromise to accept the offer in compromise and to issue to the taxpayer and any designated third-party representative a *Notice of Acceptance of Offer in Compromise* letter accepting the offer in compromise.
7. If an independent administrative review upholds Treasury's rejection of an offer in compromise, the independent administrative reviewer will send a letter to the taxpayer and any designated third-party representative stating the decision to uphold Treasury's rejection. The Office of Legal Affairs will notify the Office of Collections of the independent administrative review decision, and Treasury will reinstitute collection of the tax debt beginning with the date of the letter upholding the rejection.
8. A decision of the independent administrative review is final and may not be appealed to the Michigan Tax Tribunal or to any court.