

REGULATION 2000-4

SETTLEMENT OR COMPROMISE OF TAX LIABILITIES

Pursuant to the authority granted by Ark. Code Ann. §26-18-705 and Act 1 126 of 1999, the Director of the Arkansas Department of Finance and Administration, in compliance with Ark. Code Ann. Sec. 25-15-204, does hereby promulgate the following regulation for the settlement or compromise of controversies relating to the payment of any state tax administered by the Department:

A. DEFINITIONS. For purposes of this regulation, unless otherwise required by their context, the following definitions apply:

(1) **DEPARTMENT.** The term "Department" shall mean the Arkansas Department of Finance and Administration.

(2) **DIRECTOR.** The term "Director" shall mean the Director of the Arkansas Department of Finance and Administration, or any of his duly authorized agents.

(3) **INSOLVENCY.** The term "insolvency" shall mean:

- (a) the inability to pay debts as they fall due in the usual course of business; or
- (b) having liabilities in excess of the reasonable market value of assets held.

(4) **PERSON.** The term "person" shall mean any individual, partnership, corporation, limited liability company, association, or public or private organization of any character.

(5) **OFFER IN COMPROMISE.** The term "offer in compromise" shall mean a proposal by a taxpayer to settle a specific state tax liability for less than the total amount of tax, penalty, or interest due for a specific period of time.

(6) **TAXPAYER.** The term "taxpayer" shall mean

- (a) any person subject to or liable for any state tax; or
- (b) any person required to file a return, or to pay or withhold and remit any tax required by the provisions of any state tax law.

B. DIRECTOR'S AUTHORITY.

(1) As provided in Ark. Code Ann. §26-18-705, the Director may enter into an agreement to compound, settle, or compromise any controversy relating to a state tax or any admitted or established tax liability as to any tax collectible under any state law when:

- (a) The controversy is over the amount of tax due; or
- (b) The inability to pay results from the insolvency of the taxpayer.

(2) The director may waive or remit the interest or penalty, or any portion thereof, ordinarily accruing because of a taxpayer's failure to pay a state tax within the statutory period allowed for its payment:

- (a) If the taxpayer's failure to pay the tax is satisfactorily explained to the director; or
- (b) If the failure results from a mistake by the taxpayer of either the law or the facts subjecting him to such tax; or
- (c) If the inability to pay the interest or penalty results from the insolvency or bankruptcy of the taxpayer.

(3) In settling or compromising any controversy relating to the liability of a person for any state tax for any taxable period, the director is authorized to enter into a written closing agreement concerning the liability. When the closing agreement is signed by the director, it shall be final and conclusive, and except upon a showing of fraud or misrepresentation of a material fact, no additional assessment or collection shall be made by the director, and the taxpayer shall not institute any judicial proceeding to recover such liabilities as agreed to in the closing agreement.

C. FILING OF OFFER IN COMPROMISE.

Offers in compromise must be submitted to the Office of Revenue Legal Counsel, P.O. Box 1272, Room 209, Little Rock, Arkansas 72203. No Offer in Compromise shall be considered until the taxpayer has filed all tax returns required to be filed under Arkansas law.

D. CONTENT OF OFFERS IN COMPROMISE.

(1) An offer in compromise must contain the following information:

(a) The taxpayer's name, business name, address, telephone number, Social Security Number, Federal Employee Identification Number, and any permit number assigned to the taxpayer by the Department. This taxpayer shall also provide the above information as to any other name or business under which the taxpayer holds property, does business, or receives income.

(b) If the offer is being tendered on behalf of the taxpayer by an attorney, CPA, or other the person, a properly acknowledged Power of Attorney signed by the taxpayer authorizing the person to act on the taxpayer's behalf.

(c) A statement of the tax types, periods, and amounts due for which the offer in compromise is being requested, along with the exact amount being offered to settle the tax liability.

(2) Where an offer in compromise is based upon the alleged insolvency of the taxpayer, the taxpayer must provide, in addition to the information required under subsection (1) of this section, additional information sufficient to allow the Director to determine the taxpayer's financial condition. This information shall include the following:

(a) If an offer in compromise is also being requested from the Internal Revenue Service (IRS), the tax types, periods, and amounts due for which the offer in compromise is being requested from the IRS, along with the exact amount being offered. The taxpayer shall provide a copy of the IRS Collection Information Statement for Individuals form submitted to the IRS under the federal offer in compromise. If the offer has been accepted by the IRS, the taxpayer must also provide a copy of the formal acceptance letter from the IRS.

(b) A detailed explanation of the taxpayers' financial circumstances resulting in the insolvency of the taxpayer, including but not limited to a statement as to the taxpayer's current income, liabilities, and living expenses. A taxpayer may use the IRS Collection Information Statement for Individuals form to show the taxpayer's current income, liabilities and living expenses.

(c) If any taxpayer's liabilities as listed in subsection (b) are the result of debts to family members, the taxpayer must specifically detail the nature of the debt and the family relationship.

(d) The taxpayer's income and financial statement for the two years prior to the offer in compromise, or copies of the taxpayer's federal income tax returns for these years.

(e) An affidavit containing a declaration by the taxpayer that there have been no transfers of real or personal property within the past two years other than in the regular course of business.

(f) The source of the funds being offered to settle the tax liability.

(g) If the taxpayer has received a discharge in bankruptcy, a copy of the Order of Discharge.

(h) If the offer in compromise is being made with regard to business taxes such as gross receipts (sales) tax, compensating (use) tax, or withholding tax, a statement as to whether tax was collected but not remitted for the period for which the offer is being made.

(i) An explanation as to why a payment plan is not an option to settle this liability.

(j) Any other information requested by the Director or relevant to the issue of insolvency.

(3) Where an offer in compromise is based upon a controversy over the amount of tax due or a mistake by the taxpayer of either the law or the facts subjecting him to such tax, the taxpayer must provide information sufficient to explain the nature of the controversy or mistake.

E. EFFECT OF COMPROMISE AGREEMENT.

(1) A compromise agreement relates to the entire liability of the taxpayer with respect to the period and type of tax for which the offer in compromise is submitted, and all questions of such liability are conclusively settled thereby. Neither the Director nor the taxpayer shall, upon acceptance of an offer in compromise, be permitted to revise the agreement except by reason of the following

- (a) Falsification or concealment of facts or assets by the taxpayer; or
- (b) Mutual mistake of a material fact concerning the basis for an offer in compromise.

(2) Acceptance of an offer in compromise of a civil liability does not constitute a settlement of a criminal liability concerning the tax period in question.

F. REVIEW.

The acceptance or rejection of an offer in compromise is within the sole discretion of the Director. A final decision of the Director with regard to an offer in compromise is not subject to administrative or judicial review.

G. STATUTE OF LIMITATION.

The filing of an offer in compromise shall not stay the period of limitation for which a taxpayer may request administrative or judicial relief under the Arkansas Tax Procedure Act, Ark. Code Ann. §26-18-101 et seq. for any tax period covered by the offer.

Issued this 27th of July, 2000.

Approved by

DICK BARCLAY
Director
Department of Finance and
Administration

Approved by

TIM LEATHERS
Deputy Director/Commissioner of Revenues
Department of Finance and Administration