

Guidelines for Offer in Compromise Program

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 for which the taxpayer is requesting state relief. Only tax debt for individual income tax, under MCL 206.1 to 206.532, or for corporate income tax, under MCL 206.601 to 206.699, is eligible for compromise 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, a compromise may require a taxpayer to make timely payments under a payment plan and may require 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.

Submitting an Offer in Compromise

1. A taxpayer must submit an offer in compromise on Form 5181, *Michigan Offer in Compromise*. 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.
2. A taxpayer must also submit with Form 5181 a non-refundable initial payment on the offer of \$100.00 or 20% of the taxpayer’s offer, whichever is greater. Treasury will apply the payment toward the outstanding tax debt.

3. Treasury may reject an offer in compromise that fails to provide all required items.
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 been assessed for the tax liabilities specified in the offer in compromise.
 - b. 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.
 - c. The taxpayer must have filed returns for all taxes for all outstanding tax periods.
 - 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 accompanying schedules and documents, is true, correct and complete to the best of the signer's knowledge and belief. If not signed, the offer in compromise may be rejected.
 - f. Each taxpayer who is a party to the offer in compromise must personally sign Form 5181. 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. A Form 5181 submitted by the estate of a deceased taxpayer must be signed by the administrator, executor or other authorized fiduciary for the estate. A representative signing on behalf of an incapacitated taxpayer or a deceased taxpayer must submit proof that the representative is authorized to sign the offer in compromise. Proof includes a durable power of attorney or letter of authority from a probate court or other legally recognized document of authority.
 - g. A legally competent taxpayer 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 or unequal monthly installments after acceptance of the offer in compromise; or
 - c. payment in equal monthly installments made over a period of 6 months or more 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, and generally not more than 24 months past the date that an offer in compromise is accepted. Treasury may permit a payment period of greater than 24 months if circumstances warrant it. 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.

7. Submission of an offer in compromise does not suspend interest or penalties from accruing on the outstanding tax liability.

When an Offer in Compromise Becomes Pending

1. An offer in compromise becomes pending when the Form 5181, along with required schedules and 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 when an offer in compromise submission is received by Treasury.
4. If Treasury determines that the offer in compromise submission is incomplete or fails to provide the documentation and information sufficient for Treasury to evaluate the offer in compromise, Treasury will within a reasonable period of time notify the taxpayer and any third party designated representative in writing: 1) that the offer in compromise is being rejected; or 2) what additional information must be provided in order for the submission of the offer in compromise to be considered complete or sufficient for Treasury to evaluate.

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 letter from the taxpayer 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.

Acceptance of an Offer in Compromise

1. An offer in compromise is accepted when Treasury sends the taxpayer and any third party designated representative a 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 settle the tax debt for the tax periods specified 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 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.

Rejection of an Offer in Compromise

1. If Treasury determines that an offer in compromise does not contain the documentation and information required by Form 5181 or the applicable schedules (Forms 5182, 5183, 5184, or 5185), Treasury may reject the offer in compromise.
2. An offer in compromise may be rejected if one or more of the following exists:
 - a. The taxpayer is in bankruptcy.
 - b. The taxpayer did not pay the required initial payment of \$100.00 or 20% of the offer, whichever is greater. A payment that has insufficient funds will be considered nonpayment.
 - c. The taxpayer's opportunity to contest the tax debt in Treasury's informal conference process and to appeal the tax debt to the Michigan Tax Tribunal or a court has not expired.
 - d. The tax liability included in the offer in compromise has not been assessed by Treasury.
 - e. The taxpayer failed to submit required returns for outstanding tax periods.
3. 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 rejected.
4. The offer in compromise will 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.

5. An offer in compromise is not rejected until Treasury sends a letter to the taxpayer and any third party designated representative rejecting the offer and stating the reasons for rejection.
6. 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.
7. Treasury will not levy against property or assets to collect the tax debt while the offer in compromise is pending independent administrative review, except where Treasury determines that the taxpayer's offer in compromise was intended solely to delay collection of the tax debt or where Treasury determines the need to issue a jeopardy assessment.

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 fails to comply with any of the conditions that were part of an accepted offer in compromise or fails to file required returns or pay tax liabilities after an accepted compromise within 20 days after Treasury issues a notice and demand to the person stating that the failure to comply with the conditions of the accepted offer in compromise or the continued failure to file the required returns or pay the tax may result in the revocation of the compromise.
2. If revocation is warranted, Treasury will send the taxpayer a 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;
 - e. In the case of 1.c., above, a statement that the taxpayer's failure to comply with the conditions of the accepted offer in compromise or to file required returns or pay tax

liabilities after the offer in compromise is accepted within 20 days after Treasury's notice and demand may result in revocation; and

- f. A statement of the opportunity for independent administrative review of the revocation.

Guidelines for Reviewing an Offer in Compromise

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 Form 5181, *Michigan Offer in Compromise*, the Form and all documents accompanying the submission will be forwarded to the Office of Collections for initial processing and evaluation.
2. An offer in compromise based on *doubt as to liability* will be assigned by the Office of Collections 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.

Examination of a Doubt as to Liability Offer

A. Considering a Doubt as to Liability Offer

1. A taxpayer must submit a completed Form 5181 and Schedule 3 *Offer in Compromise Based on Doubt as to Liability* 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. 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.
4. 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.
5. 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.

6. An offer in compromise must offer a payment of greater than zero. 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.
7. An accepted offer in compromise based on doubt as to liability will only include the tax periods and assessments identified in the taxpayer's submitted Form 5181 and Schedule 3. Assessments for other tax periods for which tax liability is not in doubt may not be included in the offer in compromise.
8. Upon receipt of a Form 5181 and supporting Schedule 3 and all required documentation and information, Treasury will begin investigating the offer in compromise and evaluate whether acceptance is appropriate. Treasury will first determine if any compliance issues are present, such as unfiled returns 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.
9. 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.
10. 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.
11. The Form 5181, Schedule 3 *Offer in Compromise Based on Doubt as to Liability* and all accompanying documents submitted by the taxpayer will be examined.
12. 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.
13. 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 taxpayer and any third party designated 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 notify the Office of Collections of the acceptance. The Office of Collections will send an acceptance letter to the taxpayer and any third party designated 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 Office of Collections of the rejection. The Office of Collections will send a rejection letter to the taxpayer and any third party designated 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 Form 5186 *Request for Independent Administrative Review of Rejected Offer in Compromise* 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.

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
 - 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 and either Form 5183, *Schedule 2A (Individuals) – Collection Information Statement for an Offer in Compromise Based on Doubt as to Collectability* or Form 5184, *Schedule 2B (Businesses) – Collection Information Statement for an Offer in Compromise Based on Doubt as to Collectability* along with all required documentation and information.
3. Upon receipt of a completed Form 5181 and supporting Form 5183 or Form 5184 and all required documentation and information, Treasury will investigate the offer in compromise and evaluate whether acceptance is appropriate. Treasury will first determine if any compliance issues are present, such as unfiled returns or defaulted agreements with Treasury, and 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 is in a state of noncompliance or 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 third party designated representative by phone or in writing to request information in order to evaluate the offer in compromise. Treasury will advise the taxpayer and any third party designated 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 third party designated representative fails to respond to Treasury's contacts or attempted contacts, Treasury will send a letter to the taxpayer and any third party designated representative that lists the information needed, identifies the deadline date for providing the requested information, and states that the offer in compromise may be rejected if the information is not provided by the deadline date.
8. If a taxpayer or any taxpayer's third party designated 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 third party designated representative is delaying the progress of the investigation of the offer in compromise or fails to meet the deadline, the offer in compromise should be rejected.
9. An offer in compromise must offer a payment of greater than zero. 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. There is no defined formula to follow in making a decision on an offer in compromise, and each case must be evaluated on its own set of facts and circumstances.
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 third party designated 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 letter to the taxpayer and any third party designated 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 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. If Treasury proposes an alternative plan to pay the tax debt in full, Treasury will send a letter to the taxpayer and any third party designated representative requesting a response within 30 calendar days of the date of the letter. If the taxpayer does not respond or if the taxpayer's response does not agree with Treasury's alternative plan, then Treasury will send a letter to the taxpayer and any third party designated representative rejecting the offer in compromise.
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 a letter to the taxpayer and any third party designated 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 in writing within 20 calendar days of the date of Treasury's letter that the taxpayer submits Treasury's determined amount as the taxpayer's revised offer in compromise, and that failure of the taxpayer to do so 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 rejection letter to the taxpayer and any third party designated 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 Form 5186 *Request for Independent Administrative Review of Rejected Offer in Compromise* 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.

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 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, which are the following:
 - a. The taxpayer is not in bankruptcy;
 - b. The taxpayer paid the required payment of \$100.00 or 20% of the offer, whichever is greater;
 - c. The tax liability included in the offer in compromise has been assessed by Treasury;

- d. The taxpayer's opportunity to contest the tax liability in Treasury's informal conference process and to appeal the assessed tax liability to the Michigan Tax Tribunal or a court has expired;
 - e. The taxpayer has submitted all required returns for outstanding tax periods, and is otherwise compliant with the state's tax filing requirements; and
 - f. The reasons or circumstances for being granted the federal Offer in Compromise for the tax years continue to exist at the time the taxpayer submits its offer in compromise.
2. A taxpayer must submit a Form 5181 *Michigan Offer in Compromise* along with Form 5182 *Schedule 1 – Information Supporting a Request for a Michigan Offer in Compromise Based on Receipt of a Federal Offer in Compromise* with its offer in compromise and all required information. 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.
 3. The federal Offer in Compromise granted must be for the same tax periods as the assessments included in the taxpayer's submitted Form 5181.
 4. 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 et and the corporate income tax under MCL 206.601 et seq.
 5. An offer in compromise must offer a payment of greater than zero. 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. 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 third party designated 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 period 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 period, 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 period.
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 an acceptance letter to the taxpayer and any third party designated representative. The acceptance letter must state the reasons for acceptance and state the amount and payment method (e.g., lump sum amount, payment plan) of the offer in compromise accepted.

C. Offer Based on Federal Offer in Compromise Grant Rejected

1. If Treasury rejects an offer in compromise, it will send a rejection letter to the taxpayer and any third party designated 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 Form 5186 *Request for Independent Administrative Review of Rejected Offer in Compromise* 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.

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.

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 Form 5186 *Request for Independent Administrative Review of Rejected Offer in Compromise* 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 third party designated 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 third party designated representative a 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 third party designated 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.