



Offer in Compromise Frequently Asked Questions

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Massachusetts
Department of
Revenue

GENERAL INFORMATION

What Is an Offer in Compromise?

An Offer in Compromise (Offer) is an agreement between the taxpayer¹ and the Department of Revenue (DOR) to settle a tax liability for less than the full amount owed because: i) the taxpayer is unable to pay the full liability owed; ii) there is serious doubt as to whether the tax can be collected; iii) there is no intent to defraud by the taxpayer; and iv) accepting an offer is in the best interest of the Commonwealth.

Am I Eligible?

You must meet certain criteria before you can make an Offer.

Please review the following statements. Each statement must be “True” in order for the Department to begin processing your Offer request. If your response to any of these statements is “False,” you are not eligible for the OIC program at this time and should not file an Offer.

1. You have filed all required Massachusetts tax returns and reports with DOR.
2. You have paid the entire liability of the most recent tax year, or the last 12 months of returns.
3. You have made all required estimated payments for the current year.
4. You have received a final Notice of Assessment for all Massachusetts state taxes that you owe.
5. You do not actively dispute the amount of tax owed or that you are responsible to pay the tax liability.

If you answer “False” to any of these 5 statements, STOP. You should not proceed to make an Offer at this time.

Can You Pay Your Liability in Full?

Your Offer will be rejected if the Department determines from its Financial Audit of your income and assets that you are able to pay your tax debt in full.

What if I am in Bankruptcy?

If you are in an active bankruptcy case, you should contact the Bankruptcy Unit to discuss your options before submitting any paperwork to the Offer in Compromise Unit. While you are in an active bankruptcy case, an Offer will not ordinarily be considered. Instead, the information you provide may be forwarded to the Bankruptcy Unit in conjunction with its management of the bankruptcy case.

What if I Dispute that I am Legally Liable for the Tax Owed, or Dispute any Assessed Period?

Do not submit an Offer.

File Form ABT, Application for Abatement, if you dispute an audit assessment, request waiver of penalties, challenge a responsible person determination, or request an abatement of motor vehicle excise billed by DOR. You may also need to file Form DR-1 Office of Appeals Form.

File an amended return if you want to amend, change, or correct your original filed return, or to report a federal change or change by another state.

Can I Submit an Offer Myself or Do I Need an Accountant or Attorney?

Taxpayers can submit an Offer themselves without professional representation. However, in order to more adequately safeguard that all forms are completed and supporting documentation provided, taxpayers are strongly encouraged to consult with a tax professional before proceeding.

If an accountant or attorney represents a taxpayer, Form M-2848 *Power of Attorney and Declaration of Representative* must be submitted to the Department with the Offer in Compromise Application.

¹ “Taxpayer” is meant to indicate the individual, business, and/or person responsible for the tax liability and making the Offer.

PREPARING YOUR OFFER

Preparing to Submit an Offer

Review the Am I Eligible? Section above to be sure that you are eligible to make an Offer. Review Form M-656 *Offer in Compromise Application* and Form M-433-OIC *Statement of Financial Condition and Other Information*. Refer to the Document Checklist and gather all necessary supporting documentation.

Determining Your Minimum Offer Amount

The Minimum Offer Amount equals the net equity of your current assets, plus a projected amount that could be collected from your future income.

Complete PART 1 or PART 2 (or both depending on your situation) of Form M-433-OIC, then calculate your Minimum Offer Amount in PART 3 of Form M-433-OIC.

You must Offer an amount greater than or equal to the Minimum Offer Amount. The Minimum Offer Amount must equal or exceed \$5,000. Offering the Minimum Offer Amount does not guarantee acceptance of your Offer.

The information provided on Form M-433-OIC and your supporting documentation assists the Department in conducting an audit of your financial condition and in verifying your Minimum Offer Amount.

Your Offer will be rejected if the Department's **Financial Audit** indicates that you can pay a greater amount than what you have Offered or you have the ability to fully pay the tax liability, either immediately or through an installment agreement. Your Initial Payment and payments received during the Financial Audit will not be returned if your Offer is rejected but will be applied against your outstanding liability.

Does Offering the Minimum Offer Amount Guarantee Acceptance of My Offer?

No. The Department performs a **Financial Audit** as a part of the evaluation process. Here are some examples of reasons why your Offer for an amount equal to or greater than the Minimum Offer Amount you calculate might be rejected:

Excess Expenses - The Department references national "Collection Financial Standards" produced by the IRS to determine maximum allowable amounts for claimed expenses. Expenses that exceed these standards will be adjusted to the maximum allowed.

Omitted Items – Your Offer may be rejected if you omit income, assets, or other items of significance from your financial statement.

Insufficient Documentation – Most items on the financial statement must be substantiated. Your Offer will be declined if you do not provide sufficient documentation to support income, expenses, and other items claimed.

Property Valuation – The Department will ascertain the value of all property that you own. Your Offer may be rejected if the Department determines the value of the property is greater than shown on your financial statement.

History of Non-Compliance—A history of regular or willful noncompliance with Massachusetts state laws and tax laws may constitute grounds for rejection of your Offer.

Other – The law gives the Commissioner the option to accept an Offer but in no way requires it. The Offer will be declined in any instance where the Commissioner determines that acceptance is not in the best interest of the Commonwealth.

Will Offers for Less Than the Minimum Offer Amount be Considered?

Yes. You must explain your situation if economic hardship causes you to Offer an amount less than the Minimum Offer Amount by filling out Section 3 (Explanation of Circumstances) on Form M-656 *Offer in Compromise Application*. **However, your Offer must still equal or exceed \$5,000 despite any economic hardship.** You may also attach to Form M-656 any pertinent documents to help support your claims of economic hardship.

Economic hardship circumstances may include factors such as advanced age, serious illness with a long term or unlikely recovery, or any other factors that have an impact upon your ability to pay the total Minimum Offer Amount and continue to provide for the necessary living expenses for you and your family.

What if I am a Corporate Officer, Individual Partner, or Responsible Person for a Corporate Liability?

Complete Form M-656. Complete all of PART 1, PART 2, and PART 3 of Form M-433-OIS. A Responsible Person, Corporate Officer, or Individual Partner must submit separate applications and a separate Offer from any other Responsible Person, Corporate Officer, or Individual Partner (co-obligor(s)). Offers cannot be combined.

Basic Eligibility and each Offer will be assessed separately.

If the Offer is accepted, it does not release or discharge any co-obligor(s) from liability. DOR still reserves all rights of collection against the co-obligor(s).

Payment Options

You must select a payment option and make the Initial Payment with your Offer. The amount of the initial payment and subsequent payments will depend on the total amount of your Offer and which of the following payment options you choose:

Lump Sum Cash: This option requires 20% of the total Offer amount to be paid with the Offer and the remaining balance paid within 60 days of the date your Offer is accepted.

Installment Payment: This option requires the first payment to be paid with the Offer and the remaining balance paid in monthly automatic payments from a bank account within 24 months, in accordance with your proposed Offer terms. Under this option, you must make monthly payments while the Department is evaluating your Offer. **Failure to make these payments, until you have received a final decision letter, will cause your Offer to be rejected. There is no appeal.**

Payments made on an Offer will not be returned. If your Offer is accepted, your payments made during the Offer process will be applied to your Offer amount.

How is My Offer Evaluated?

First, the Department's Offer In Compromise Unit within the Collections Bureau appraises the taxpayer's situation for Program Eligibility. This **Basic Eligibility Appraisal** will be made within 7 days of the receipt of the Application. If not eligible for the OIC Program, the Application will be returned. Any Initial Payment will be returned.

Once Basic Eligibility is determined to have been met, any Initial Payment will not be returned.

If Basic Eligibility is met, the Department performs a complete **Financial Audit** of the Offer packet. This includes examining the taxpayer's assets, liabilities, and ability to pay both immediately and over time. The taxpayer's financial position and previous tax payment history are audited by the Department. The Financial Audit may take up to 5 – 6 months to be completed and is dependent upon the taxpayer's cooperation.

Although the Department evaluates each case based on its own unique set of facts and circumstances, the Department gives the following factors strong consideration:

- The taxpayer's ability to pay, as determined by the Department
- The amount of equity in the taxpayer's assets
- The taxpayer's present and future income and expenses
- The potential for changed circumstances
- Whether the offer is in the best interest of the Commonwealth
- Whether the offer contains fraudulent, misleading, or incomplete information

You may be contacted if additional information or documentation is needed. You must respond timely or your Offer may be rejected and the Initial Payment and any payments received during the financial audit review will be applied against the outstanding liability.

The Offer in Compromise Unit also consults with DOR legal counsel to determine whether a settlement is in the best interests of the Commonwealth. Based upon the application and documents presented, a recommendation is then made to two Deputy Commissioners and to the Commissioner of Revenue for acceptance or denial. The Commissioner of Revenue must approve an Offer for it to be accepted.

The Attorney General must review, and may object to, any Offer proposing to settle the liability: i) for over \$20,000 less than the total amount owed; or ii) for less than half of the total amount owed.

Will Collections Stop?

After the Basic Eligibility Appraisal is complete and once the Financial Audit begins, DOR will generally cease collections activity on the tax liability (with some important exceptions noted below) while we evaluate your Offer. Tax liens on your property will remain in place while your Offer is being evaluated. DOR will also continue to intercept and apply payments from sources including but not limited to gambling and lottery winnings, overpayments, offsets, refunds, insurance proceeds, and/or other governmental payments. Interest and penalties will continue to accrue on any unpaid amounts.

It is important to note that **the Department will not suspend collection if we determine that you submitted your Offer to delay collection or cause a delay which will jeopardize our ability to collect the tax.**

For the period during which the Offer is pending, the taxpayer agrees to the extension of the statutory time allowed for the Commonwealth to collect the tax liability and the further extension of the statutory time when an accepted Offer includes installment payments.

What Am I Required to Do While My Offer is Being Evaluated?

You must timely file and pay all required tax returns while the Offer is under review and pending.

You must make monthly installment payments while the Offer is under review and pending, if an Installment Payment Offer is proposed.

You must also respond promptly and within the specified timeframe to any requests for additional information. Immediately notify the Department of changes to your email address and/or phone number. Monitor your email, mail, and phone for any information requests from the Department.

Failure to respond in a timely and sufficient manner may result in rejection of your Offer. **Your Initial Payment and any payments received during the Financial Audit will not be returned if your Offer is rejected and will be applied against your outstanding liability.**

Can I Withdraw My Offer?

Yes. You may withdraw your offer at any time. Notify the Department immediately by email.

If you withdraw your offer after Basic Eligibility has been determined, **your Initial Payment and any payments received during the Financial Audit will not be returned and will be applied against your outstanding liability.**

HOW TO APPLY

How Do I Make an Offer in Compromise?

To make an Offer in Compromise, you must completely fill out the Offer in Compromise Application.

Before an application will be considered, all required supporting documentation must be provided to the Department.

If the taxpayer has made a good faith effort to complete the application in full and provide all required documentation, the Department will contact the taxpayer with a list of any missing items and allow the taxpayer a reasonable amount of time to provide them.

What Do I Send With My Offer?

1. Form M-656 *Offer in Compromise Application* completed and signed
2. Form M-433-OIC *Statement of Financial Condition and Other Information* completed and signed
3. Electronic Funds Transfer Authorization Form completed and signed
4. Form M-2848 *Power of Attorney and Declaration of Representative* completed and signed if someone is acting as a representative for the taxpayer
5. Supporting Documentation – Refer to the Documentation Checklist in the Application Packet for a list of items to include
6. Initial Payment – You must make an Initial Payment with your Offer based on the payment option you selected (20% of the Offer amount for a lump sum cash Offer or the first month's installment for an Installment Payment Offer). The **Initial Payment**

and payments received during the Financial Audit will not be returned if your Offer is rejected or withdrawn and will be applied against your outstanding liability.

- With an emailed Offer, Initial Payment must be made by electronic funds transfer through your MassTaxConnect account. If you do not have an MTC account, contact the Collections Bureau at (617) 887-6400 for assistance in making the payment
- With a mailed Offer, Initial Payment must be in the form of a certified check, cashier's check, treasurer's check, or bank check made payable to the "Commonwealth of Massachusetts" or "Massachusetts Department of Revenue"

Where Do I Send My Offer?

The preferred way to send your Offer in Compromise Applications and all supporting documentation is to scan and email to:

doroicunit@dor.state.ma.us

If unable so send electronically, mail to:

Massachusetts Department of Revenue
Collections/OIC Unit
P.O. Box 7021
Boston, MA 02204

Contact the Collections Bureau at (617) 887-6400 if you need assistance in completing the application.

COMPLETING THE APPLICATION PACKAGE

Step 1 – Gather Your Information

To calculate an Offer amount, you will need to gather information about your financial situation, including cash, investments, available credit, assets, income, and debt.

You will also need to gather information about your household's average monthly income and actual expenses. The entire household includes all those in addition to yourself who contribute money to pay expenses relating to the household such as, rent, utilities, insurance, groceries, etc. This is necessary for the Department to accurately evaluate your Offer. It may also be used to determine your share of the total household income and expenses.

In general, the Department will not consider expenses for tuition for private schools, college expenses, charitable contributions, and other unsecured debt payments as part of the expense calculation.

Step 2 – Fill Out Form M-433-OIC, Statement of Financial Condition and Other Information

Fill out Form M-433-OIC *Statement of Financial Condition and Other Information*. Items that do not apply to you should be notated with "N/A."

Complete PART 1 if you are an individual wage earner, operate (or operated) as a sole proprietor or are authorized to submit an Offer on behalf of the estate of a deceased individual. If you are married but living separately from your spouse, then you each must submit a Form M-433-OIC. This will be used to calculate an appropriate Offer amount based on your assets, income, expenses, and future earning potential. You will have the opportunity to provide a written explanation of any special circumstances that affect your financial situation.

Complete PART 2 if the business is or was a Corporation, Partnership, LLC classified as a corporation, single member LLC taxed as a corporation, or other multi-owner/multi-member LLC. This will be used to calculate an appropriate Offer amount based on the business assets, income, expenses, and future earning potential.

In all cases, complete PART 3 to calculate your Minimum Offer Amount. If you have special circumstances that would hinder you from paying the Minimum Offer Amount, explain them on Form M-656 *Offer in Compromise Application* section 3 ("Explanation of Circumstances").

Step 3 – Fill Out Form M-656 Offer in Compromise Application

Fill out Form M-656 *Offer in Compromise Application*. The Form M-656 identifies your Offer amount and the payment terms. It also identifies the tax years and type of tax you would like to compromise.

Step 4 – Fill Out the Electronic Funds Transfer Authorization

Fill out the Electronic Funds Transfer Authorization if you propose to pay your Offer through installment payments. You must make monthly installment payments while your Offer is being evaluated. Once enrolled in EFT, your payments will be deducted automatically from your bank account and submitted to DOR for the duration of the OIC Installment Agreement.

Step 5 – Fill Out Form M-2848 Power of Attorney and Declaration of Representative

Fill out Form M-2848 *Power of Attorney and Declaration of Representative*, if necessary. If an accountant, attorney, or someone else acts as a representative for the taxpayer, Form M-2848 must be completed and submitted.

Step 6 – Include Required Documentation

You will need to include supporting documentation to the information on Form M-433-OIC. A list of the documents required will be found at the end of the application packet. Include copies of all required attachments. **Do not send original documents.**

Step 7 – Make or include Initial Payment

With an emailed Offer, Initial Payment must be made by electronic funds transfer through your MassTaxConnect account. With a mailed Offer, Initial Payment must be in the form of a certified check, cashier's check, treasurer's check, or bank check.

Your Initial Payment is based on the payment option you selected (20% of the Offer amount for a lump sum cash Offer or the first month's payment for an Installment Payment Offer). **Initial payments and any payment received during the Financial Audit will not be returned and will be applied to your tax liability if your Offer is rejected by the Department or withdrawn by you.**

Make check payments payable to the "Commonwealth of Massachusetts" or "Massachusetts Department of Revenue". All payments must be made in U.S. dollars.

Step 8 – Send the Application Package

Make a copy of your completed application package and keep it for your records.

We prefer that you send the completed application package to the above DOR email address. If you are unable to do so, mail the completed application package to the above DOR mailing address.

If you are working with a DOR employee, let him or her know you are sending or have sent an Offer to settle your tax debt(s).

PAYING YOUR OFFER

What Happens if My Offer is Accepted?

When the Offer is accepted, the Department will prepare and send a settlement agreement for the taxpayer to electronically sign and return. Please ensure that you maintain an accurate and updated email and mailing address with the Department.

The Commissioner of Revenue will then electronically sign the agreement, a copy of which will be sent to the taxpayer via email for them to retain in their records.

Payment of the accepted Offer must be made either by the payment due date as indicated on the settlement agreement or under an installment payment agreement. If a state tax lien(s) has been placed on the taxpayer's property, the Department will release the lien(s) promptly upon receipt of full payment of the Offered amount.

Payment of a lump sum Offer may be made by electronic funds transfer (EFT), cashier's check, treasurer's check, or bank check.

Payment of an Installment Payment Offer may only be made by monthly automatic debits from a financial institution.

The taxpayer's name, and the amount of the settlement will be published and made public in the DOR Annual Report. Compromise agreements are not protected by the confidentiality provisions of the Massachusetts General Laws, Chapter 62C, §21.

The compromise agreement, signed by all parties and including the reasons for compromise, is a:

- Public record, and
- Open to public inspection upon request.

Once an Offer takes effect, neither party may reopen the matter except for:

- Falsification or concealment of assets, or
- Mutual mistake of material fact

What if My Offer is Rejected?

Notification: You and your designated representative will be notified by email or mail if the Offer is rejected. You should immediately contact the Department at (617) 887-6400 to arrange payment of the entire liability.

Installment Payments: If immediate payment of the entire liability is not possible, you may request payment through a Department approved installment payment agreement.

Counteroffers: You should not expect a counteroffer from the Department, nor will the Department entertain a counteroffer from you. The Department does on limited occasions make a counteroffer, but only if the taxpayer’s initial Offer is reasonably close to what the Department believes is acceptable based on the taxpayer’s financial information.

Your Initial Payment and any payments received during the Financial Audit will not be returned if your Offer is rejected but will be applied against your outstanding liability.

Why Might My Offer be Rejected?

An Offer in Compromise may be rejected for a variety of reasons. An Offer will likely be rejected if the taxpayer has:

- The ability to pay the tax liability in full as determined by the Department, either immediately or on an installment payment agreement
- Failed to promptly comply with DOR requests for additional information within the specified timeframe or provided insufficient documentation
- Submitted false or misleading information
- Failed to disclose of material information
- Omitted or undervalued income or assets on the application
- A history of regular or willful non-compliance with Massachusetts laws including but not limited to the tax laws
- A history of criminal tax fraud (conviction, guilty plea, or no contest plea)

I Have Questions About the Offer in Compromise Application. Who Should I Contact?

Contact the Department at (617) 887-6400 if you need assistance in completing the application.

For more detailed information regarding the laws, regulations, and administrative procedures, please refer to the following references: Massachusetts General Laws, Chapter 62C, §37A; and DOR Administrative Procedure 634.