



SUMMARY

The Board of Equalization's (BOE) Offer in Compromise (OIC) Program provides a payment option for taxpayers that do not have, and will not have in the foreseeable future, the income, assets, or means to pay their tax liability. Qualifying taxpayers apply to the BOE with a proposed amount they are able to pay. If accepted by the BOE, the taxpayer can pay a reduced amount to be relieved of remaining tax liens.

The provisions of the program pertaining to offers in compromise from open and active businesses are currently set to sunset on January 1, 2018. AB 525 will remove the sunset date, therefore extending the BOE's authority to consider all types of OIC applications indefinitely.

BACKGROUND

An offer in compromise is an agreement between the BOE and a taxpayer who cannot pay his or her tax liability in full. The taxpayer offers to pay an amount that he or she believes is the maximum amount he or she can pay, and if approved, the BOE is able to collect the maximum amount feasible without forcing the taxpayer into bankruptcy. OIC programs increase the tax liabilities that are collected, even if at a reduced amount.

An OIC is processed depending on whether the business is (1) closed and discontinued, or (2) open and active. The program for Closed and Discontinued Businesses was enacted in 2002 and does not currently have a sunset date. The open and active business program was first authorized in 2009, and then reauthorized in 2013 with a sunset extension to 2018. By removing the sunset date to make this part of the program permanent, the entire OIC Program will be authorized indefinitely.

The Open and Active Business component of the program was authorized in 2009 to allow for compromises with taxpayers who would otherwise have to sell or discontinue their businesses because of their inability to pay their final tax liability in full. To qualify, the liability due must have been from retail transactions in which the taxpayer did not collect tax from the purchasers or other persons. This can happen with new and small businesses that mistakenly believe their transactions are not subject to tax, and upon realization cannot reasonably collect the owed tax from past customers. These businesses typically do not have the capital to pay their liability lump sum.

The BOE believes that it is in the best interest of the state to compromise a tax debt in these cases. Additionally, one of the requirements of open and active businesses for which the BOE has accepted an OIC is that they must file and pay by the due date all subsequently required returns for a five-year period.

Since 2009, the BOE has accepted offers from 54 "open and active" businesses, totaling \$3.82 million. Of these businesses, 42 remain open today and continue to pay their sales and use taxes totaling an additional \$14.3 million to the benefit of state and local governments.

If the provisions authorizing the BOE to compromise tax liabilities of open and active businesses sunset on January 1, 2018, the OIC program will be limited to only businesses that have been closed and discontinued. This would be a lost state tool to help new and small businesses stay open and learn to properly collect, file, and pay state taxes.

THIS BILL

AB 525 will extend the Board of Equalization's authority to operate the Offer in Compromise Program indefinitely, by removing the January 1, 2018 sunset date.

This bill will allow the BOE to continue accepting compromises from taxpayers that cannot pay their full liability and will otherwise have to sell or discontinue their businesses. According to the BOE, allowing offers in compromise in these situations enables the state to collect taxes that will otherwise be lost when the business is inevitably forced into bankruptcy.

SUPPORT

California State Board of Equalization

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