

## CHAPTER 19

## SETTLEMENTS—COMPROMISES AND ABATEMENTS OF TAX, PENALTY, OR INTEREST

**701—19.1(421) Settlements.** Pursuant to Iowa Code section 421.5, in addition to the authority granted to the department pursuant to Iowa Code section 17A.10 and notwithstanding Iowa Code section 7D.9, the department may, in its sole discretion, settle any taxes, penalties, or interest. A settlement may be a compromise or full abatement of any amount in dispute.

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**701—19.2(421) Amounts qualifying for settlement.** To be eligible for settlement under Iowa Code section 421.5, the amount must be of doubtful liability or doubtful collectability or must cause severe economic hardship, or the settlement of the amount must promote effective tax administration. The decision whether to accept a settlement amount will be based on a taxpayer's facts and circumstances; verifiable documentation is required for all grounds.

**19.2(1) Doubtful collectability.** Doubt as to collectability may exist in any case where the taxpayer's assets and discretionary income may not satisfy the full amount of the liability after satisfying senior priority liabilities. An offer to settle based on doubt as to collectability may be considered acceptable if it is unlikely that the tax, penalty, and interest can be collected in full and the offer reasonably reflects the amount the department could collect through other means, including administrative and judicial collection remedies. This amount is the reasonable collection potential of a case. In determining the reasonable collection potential of a case, the department will take into account the taxpayer's verifiable reasonable basic living expenses. In some cases, the department may accept an offer of less than the reasonable collection potential of a case if there are special circumstances.

**19.2(2) Severe economic hardship.** The department may settle where it determines that, although collection in full could be achieved, collection of the full amount would cause the taxpayer severe economic hardship. Severe economic hardship is defined as the inability to pay reasonable basic living expenses. An offer to settle based on economic hardship may be considered acceptable when, even though the tax, penalty, and interest could be collected in full, the amount offered reflects the amount the department can collect without causing the taxpayer severe economic hardship.

**19.2(3) Doubtful liability.** A doubtful liability may exist where there is a significant doubt as to the existence or amount of the correct tax liability under the law. A doubtful liability does not exist where the liability has been established by a final court judgment or administrative ruling or final order of the department concerning the existence or amount of the liability. An offer to settle a doubtful liability may be considered acceptable if it reasonably reflects the likelihood the department could expect to collect through litigation. This analysis may include consideration of the hazards and costs of litigation that would be involved if the liability were litigated. The evaluation of the hazards and costs of litigation is not an exact science and is within the discretion of the department.

**19.2(4) Promote effective tax administration.** The department may settle to promote effective tax administration where compelling public policy or equity considerations identified by the taxpayer provide a sufficient basis for settling the liability that is equitable under the particular facts and circumstances of the case. Settlements pursuant to this subrule may be justified only where, due to exceptional circumstances, collection of the full liability may undermine public confidence that the tax laws are being administered in a fair and equitable manner. The taxpayer will be expected to demonstrate circumstances that justify settlement even though a similarly situated taxpayer may have paid the liability in full. The department may settle cases where doing so will promote voluntary compliance with the law. The department may decline a settlement for reasons promoting effective tax administration if the settlement of the liability would undermine compliance by taxpayers with the tax laws.

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**701—19.3(421) Settlement procedures and limitations, generally.**

**19.3(1) Whether to seek a settlement.** When determining whether to seek a settlement, a taxpayer should first consider whether a settlement is necessary. Nothing in this chapter is intended to preclude a

taxpayer who misses the time provided by law to appeal a notice of assessment from paying the amount due, filing a refund claim, and contesting any denial of that refund claim as described in Iowa Code section 421.60(2) “h.” If a taxpayer has not received a billing but has information that would adjust the liability down, the appropriate remedy is to file an amended return within the statute of limitations. If a taxpayer has received an estimated assessment and is within three years of when the assessment was issued, the taxpayer should file a return. If a taxpayer has received an assessment and is within the time period to file an appeal, it is proper to file an appeal rather than a settlement request. If a taxpayer does not dispute the liability, but is unable to pay the liability due to financial hardship, the taxpayer should submit an offer in compromise application.

**19.3(2) *Which type of settlement to seek.*** Different types of settlements require different forms and procedures. Procedures for abatement, offer in compromise, and voluntary disclosure agreements are described in specific rules below. For matters currently under appeal pursuant to 701—Chapter 7, settlement requests must be submitted to the appeals section of the legal services and appeals division in accordance with 701—subrule 7.11(5). For matters currently under audit, settlement requests must be submitted to the department employee assigned to the audit.

**19.3(3) *Who may authorize a department settlement.*** Only the director, the deputy director, or the division administrator of the legal services and appeals division may approve and sign settlements under this chapter unless otherwise specified in rule or designated by the director.

**19.3(4) *Discretionary nature of settlements.*** There is no right to appeal an abatement denial, offer in compromise denial, or other settlement decision by the department under 701—Chapter 7. As described in Iowa Code section 421.5, a taxpayer shall not have the right to a settlement of any tax, penalty, or interest liability under this chapter or Iowa Code section 421.5. Any determination shall be discretionary and shall be final and conclusive except in the case of fraud or mutual mistake of material fact or as otherwise stated in a written settlement agreement between the taxpayer and the department.

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#### **701—19.4(421) Applications for abatement.**

**19.4(1) *When to file.*** Abatement is intended to be a possible remedy for taxpayers who have received a billing or refund denial letter and have information that could lead to a reduction in the liability, but failed to file a timely appeal. Grounds for abatement include doubt as to liability and promoting effective tax administration.

**19.4(2) *How to file an application.*** To apply, a taxpayer must submit an application for abatement in the department’s prescribed paper or electronic format. The application can be submitted through GovConnectIowa or by using the form available on the department’s website and following the submission instructions on the form.

**19.4(3) *Required information.*** A request for abatement must be submitted on the department’s form. The form must be fully completed and properly signed.

**19.4(4) *Review of requests.***

*a.* After the application has been submitted, it will be reviewed by department staff.

*b.* Additional information may be requested to assist the department in its review.

*c.* A letter will be issued to the applicant notifying the applicant of the decision to grant, deny or partially grant the abatement request. The department’s decision on an abatement application will only be contained in a formal determination letter.

*d.* Applicants whose applications are granted in part will receive an agreement describing the terms of the partially granted abatement request and must sign and return that agreement to the department in order to receive the partially granted abatement.

*e.* Decisions to accept an abatement request in full or in part for doubt as to liability may be approved by the bureau chief of the compliance section of the tax management division or another staff member designated by the director.

*f.* Decisions to accept an abatement request to promote effective tax administration may only be approved by the director, the deputy director, or the division administrator of the legal services and appeals division.

**19.4(5) Limitations.** The department will accept applications for abatement during the appeal period but will not review such applications until the appeal period has passed. The department will generally not refund amounts already paid in response to an application for abatement. Some exceptions may include the following circumstances:

*a.* The application is received within three years after the return related to the application for abatement was due or within one year after the payment related to the application for abatement was made, whichever is later.

*b.* The application is received within one year of the final determination date of any final federal adjustment arising from an internal revenue service audit or other similar action by the internal review service with respect to the particular tax year at issue in the application.

*c.* Payments were received in violation of Title 11 of the United States Code.

*d.* Exceptional circumstances demonstrate that a refund would promote effective tax administration as described in subrule 19.2(4).

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#### **701—19.5(421) Offers in compromise.**

**19.5(1) When to file.** An offer in compromise packet should be used to apply for relief based on doubtful collectability or severe economic hardship.

**19.5(2) How to submit a packet.** To apply, a taxpayer must submit an offer in compromise packet in the department's prescribed paper or electronic format. An offer in compromise packet can be submitted through GovConnectIowa or by using the form available on the department's website and following the submission instructions on the form.

**19.5(3) Required information.** An offer in compromise must be submitted using the department's offer in compromise packet.

**19.5(4) Review of requests.**

*a.* After the packet has been submitted, it will be reviewed by department staff.

*b.* Additional information may be requested to assist the department in its review.

*c.* A letter will be issued to the applicant notifying the applicant of the decision to grant, deny or partially grant the offer in compromise request. The department's decision on an offer in compromise request will only be contained in a formal determination letter.

*d.* Applicants whose applications are granted in part will receive an agreement describing the terms of the partially granted offer in compromise request and must sign and return that agreement to the department in order to receive the partially granted offer in compromise.

*e.* Decisions to enter into an offer in compromise must be approved by the bureau chief of the central collections unit, the director, the deputy director, the division administrator of the legal services and appeals division, or another staff member designated by the director.

**19.5(5) Limitations.** The department will not review offer in compromise applications until a liability is at least one year old. Premature applications will be denied. Denial on this basis does not prevent the taxpayer from reapplying at a later date.

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#### **701—19.6(421) Voluntary disclosure agreements.**

**19.6(1) When to file.** Any person who is subject to Iowa tax or tax collection responsibilities may be eligible for the voluntary disclosure program. Being subject to Iowa tax may occur when a person has Iowa source income, business activities, or representatives or other presence in Iowa. Certain activities by such persons may create Iowa tax return filing requirements for Iowa source income. In addition, activities may also result in tax liabilities that are past due and owing.

**19.6(2) Purpose of the voluntary disclosure program.** The purpose of the voluntary disclosure program is to promote effective tax administration through voluntary compliance by encouraging

unregistered business entities and persons to voluntarily contact the department regarding unreported Iowa source income or other Iowa taxes described in subrule 19.6(4).

**19.6(3) Anonymity.** A person or the person's representative may initially contact the department on an anonymous basis. Anonymity of the taxpayer can be maintained until the voluntary disclosure agreement is executed by the taxpayer and the department. The voluntary disclosure program may be used by the department and the taxpayer to report previous periods of Iowa source income and to settle outstanding tax, penalty and interest liabilities, but it must also ensure future tax compliance by the taxpayer.

**19.6(4) Type of taxes eligible.** Only taxes, penalties, and interest related to the following tax types are eligible for settlement under the voluntary disclosure program: corporate income tax, franchise tax, fiduciary income tax, withholding income tax, individual income tax, composite return tax, local option school district income surtax, state sales tax, state use tax, fuel taxes, cigarette and tobacco taxes, local option tax, state and local hotel and motel taxes, automobile rental excise tax, equipment excise tax, water service excise tax, and the prepaid wireless 911 surcharge.

**19.6(5) Eligibility of the taxpayer.** The department has discretion to determine who is eligible for participation in the voluntary disclosure program. In making the determination, the department may consider the following factors:

- a. The person must be subject to Iowa tax on Iowa source income or have Iowa tax collection responsibilities;
- b. The person must have tax due;
- c. The person must not currently be under audit or examination by the department or under criminal investigation by the department;
- d. The person must not have had any prior contact with the department or a representative of the department that could lead to audit or assessment associated with the tax types or tax periods sought to be addressed under the program;
- e. The type and extent of activities resulting in Iowa source income;
- f. Failure to report the Iowa source income or pay any liability was not due to fraud, intentional misrepresentation, an intent to evade tax, or willful disregard of Iowa tax laws; and
- g. Any other factors which are relevant to the particular situation.

**19.6(6) How to file an application.**

a. *Required format.* To apply, a taxpayer must submit an application in the department's prescribed paper or electronic format. A voluntary disclosure application can be submitted through GovConnectIowa or by using the form available on the department's website and following the submission instructions on the form.

b. *Required information.* A voluntary disclosure application must be submitted using the department's form.

c. *Review of the application.*

- (1) After the application is submitted, it will be reviewed by department staff.
- (2) Additional information may be requested to assist the department in its review.
- (3) The department will notify an applicant in writing regarding whether the applicant's application for participation in the program is accepted or rejected.

**19.6(7) Terms of the voluntary disclosure agreement.**

a. *Discretion.* The department has the discretion to settle any outstanding Iowa tax, penalty, and interest liabilities of the eligible applicant. Settlement terms are on a case-by-case basis. Items considered by the department in determining the settlement terms include: the type of tax, the tax periods at issue, the reason for noncompliance, whether the tax is deemed to be held in trust for the state of Iowa, the types of activities resulting in the tax, the frequency of the activities that resulted in the tax, and any other matters which are relevant to the particular situation.

b. *Maximum scope of audit.* If a taxpayer initiates the contact with the department and is eligible for the voluntary disclosure program and complies with the agreement terms, the maximum prior years for which the department will generally audit and pursue settlement and collection will be five years, absent an intent to defraud, the making of material misrepresentations of fact, or an intent to evade tax.

*c. Future filing requirements.* All voluntary disclosure agreements must require that the applicant file future Iowa tax returns, unless the activity by the applicant resulting in the Iowa source income has changed or there has been a change in the law, rules, or court cases that dictate a different result.

*d. Audit and assessment rights.* The department reserves the right to audit all returns and other documents submitted by the applicant or a third party to verify the facts and whether the terms of the voluntary disclosure agreement have been met. The department may audit information submitted by the applicant at any time within the allowed statutory limitation period. The department may also assess any tax, penalty, and interest found to be due in addition to the amount of original tax reported. The statute of limitations for assessment and statute of limitations for refunds begin to run as provided by law.

**19.6(8) Commencement of the voluntary disclosure agreement.** The voluntary agreement commences on the date the voluntary disclosure agreement is fully executed by all parties or another date specified by the agreement. Execution of the agreement is complete when the agreement is executed by the taxpayer or taxpayers and the bureau chief of the compliance section of the tax management division or another staff member designated by the director. Prior to the execution of the voluntary disclosure agreement by the taxpayer and the department, the taxpayer is not protected from the department's regular audit process if the identity of the taxpayer, as an applicant, is unknown to the department. However, if the department has knowledge of the taxpayer's identity, as an applicant, the department will not take audit action against the taxpayer during the voluntary disclosure process. If a voluntary disclosure agreement is not reached, the department may assess tax, penalty, and interest as provided by law at the time the identity of the applicant becomes known to the department.

**19.6(9) Voiding a voluntary disclosure agreement.**

*a. Authority.* The department has the authority to declare a voluntary disclosure agreement null and void subsequent to the execution of the agreement. The department may void the contractual agreement if the department determines that a misrepresentation of a material fact was made by the person or a third party representing the person to the department. The department may also void a voluntary disclosure agreement if the department determines any of the following has occurred:

- (1) The person does not submit information requested by the department within the time period specified by the department, including any extensions granted by the department;
- (2) The person fails to file future Iowa returns as agreed to in the voluntary disclosure agreement;
- (3) The person does not pay the agreed settlement liability within the time period designated by the department, including any extensions of time that may be granted by the department;
- (4) The person does not remit all taxes imposed upon or collected by the person for all subsequent tax periods and all tax types that are subject to the voluntary disclosure agreement;
- (5) The person fails to prospectively comply with Iowa tax law. Whether the person has failed to prospectively comply with Iowa tax law is determined by the department on a case-by-case basis;
- (6) The person, based on a determination by the department, materially understates the person's tax liability; or
- (7) The person has made a material breach of the terms of the voluntary disclosure agreement.

*b. Audit rights.* Voiding of the agreement results in nonenforceability of the agreement by the applicant and allows the department to proceed to assess tax, penalty, and interest for that person's Iowa tax and tax collection responsibilities for all periods within the statute of limitations. If the applicant is justifiably rejected for the voluntary disclosure program or the agreement between the person and the department is declared by the department to be null and void, the department reserves the right to audit all returns or other documents submitted by the applicant or a third party on behalf of the applicant and to make an assessment for all tax, penalty, and interest owed. If the voluntary disclosure agreement is voided or the application for the program is rejected and the department issues an assessment, the taxpayer may appeal the assessment pursuant to 701—Chapter 7. If the department does not issue an assessment, but does reject the application or voids the agreement, such action is not subject to appeal under 701—Chapter 7 but is considered to be "other agency action."

**19.6(10) Partnerships, partners, S corporations, shareholders in S corporations, trusts, and trust beneficiaries.** Once the department has initiated an audit or investigation of any type of partnership, partners of the partnership, S corporations, a shareholder in an S corporation, a trust, or trust beneficiaries,

the department is deemed to have initiated an audit or investigation of the entity and of all those who receive Iowa source income from or have an interest in such an entity for purposes of eligibility for participation in the voluntary disclosure program.

**19.6(11) *Transfer or assignment.*** The terms of the voluntary disclosure agreement are valid and enforceable by and against all parties, including their transferees and assignees.

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These rules are intended to implement Iowa Code sections 421.5 and 421.17.

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