

DECLARATION OF ARTHUR J. (KIP) DELLINGER, JR.  
PURSUANT TO 28 U.S.C. § 1746

I, Arthur J. (Kip) Dellinger, Jr., hereby declare as follows:

1. I am the Senior Tax Partner with Kallman And Co. LLP, located in Los Angeles, California. I have been a licensed Certified Public Accountant ("CPA") in California for approximately 41 years, and I have experience in income and estate tax planning and tax controversy matters for both individuals and businesses. I have represented clients in collection matters before the Internal Revenue Service ("IRS") and the California Franchise Tax Board and Board of Equalization. I have also provided services as an expert in areas of CPA tax practice conduct and malpractice defense.

QUALIFICATIONS

2. As detailed in my *Curriculum vitae*, a true and correct copy of which is attached as **Dellinger Att. A**, I have been the Chair and/or a member of numerous tax committees and task forces for many years, including the Tax Practice Responsibilities Committee, the Penalty Reform Task Force for Treasury, Reportable Transactions Task Force, Statements on Standards for Tax Services Tax Force, Circular 230 Task Force, Los Angeles Chapter Tax Committee, and California Society of CPAs State Taxation Committee.
3. I have also written numerous books on tax issues, including *The Practice Guide to Federal Tax Practice Standards* (CCH 2006), *Offer in Compromise: Insights &*

*Strategies* ( CCH 2001, co-author), and *Innocent Spouse Relief: Insights and Strategies* (CCH 2001). In addition, I have written over three-dozen articles on technical and procedural tax topics for leading publications, including *Taxes*, *The Journal of Tax Practice & Procedure*, *The Tax Adviser*, *California CPA*, and *Tax Notes Magazine*.

4. I generally speak at conferences and before professional organizations over thirty times a year on substantive tax issues in the areas of ethics and conduct standards for CPAs and attorneys. I also developed and teach two eight-hour continuing education course for CPAs on behalf of the Education Foundation of the California CPA Society, titled "FIN 48: Accounting for Uncertain Tax Positions and Tax Practice Standards and Quality Control for California CPAs."
  
5. My work experience includes the following: Staff Accountant, 1962-1967, Arthur J. Dellinger & Associates CPAs; Staff Accountant, Senior Accountant, Supervising Sr. Accountant, 1968 to November 1971, Haskins & Sells (now Delloitte & Touche); Tax Manager, December 1971 to April 1977, Tax Partner, 1973, Bisgeier, Breslauer & Co CPAs; National Managing Tax Partner, April 1977 to May 1978, Gelfand, Breslauer, Rennert & Feldman CPAs; Managing Partner, June 1978 to June 2000, Dellinger & Dellinger CPAs; and Senior Tax Partner, July 2000 to present, Kallman And Co. LLP CPAs.

6. In summary, for the past 41 years, I have been a practicing CPA in California, have served on numerous tax committees and task forces, have conducted numerous speaking engagements and taught courses on tax issues, and have written numerous books and articles regarding tax and administrative policy and substantive tax procedure.
  
7. I am familiar with, and knowledgeable about, issues relating to the IRS and the Internal Revenue Code, tax debts, and tax solutions for both individuals and businesses. In particular, I am knowledgeable about payment and settlement options for resolving tax debts with the IRS, including Offers in Compromise (“OICs”), penalty and interest abatements, and installment agreements, and I have written books and articles on these subjects. This knowledge comes from my extensive training, experience, and dealings with the IRS and the California Franchise Tax Board and Board of Equalization. Thus, based on my background, training, and experience, I am well qualified to offer my expert opinion in this case. In addition, I have served as an expert consultant/witness in several tax malpractice cases and in several arbitrations.

#### SCOPE OF WORK

8. I have been asked by the Federal Trade Commission (“FTC”) to provide background information and opinions about areas involving delinquent taxes and the IRS’s tax relief programs and payment options, including the eligibility requirements that must be met in order to obtain OICs, penalty and interest

abatements, and installment agreements. I have also been asked to assess some factual scenarios to determine whether, under the facts presented in each scenario, the hypothetical taxpayers would be eligible for particular tax relief programs.

### **BACKGROUND ON TAX DEBTS**

9. As the nation's tax collection agency, the IRS administers the Internal Revenue Code enacted by Congress. When a taxpayer has failed to pay a self-assessed tax debt, it becomes delinquent. IRS subsequently sends the taxpayer a bill, called a notice. This notice begins the collection process. The IRS has 10 years from the date of assessment of the taxes to collect on tax debts. The date of assessment is generally when the amount of the taxpayer's liability is posted to the account at the IRS Service Center.
  
10. When the payment of a tax debt is not made on time, interest and penalties begin to accrue on the unpaid balance. Interest (which is adjusted periodically) on unpaid taxes is compounded daily and charged on the unpaid taxes from the due date until the date of payment. Penalties are also assessed on overdue tax debts. The amount of the penalties differs depending on whether the taxpayer has, or has not, filed a return on time. If a return was filed on time, but the taxes were not paid on time, a late payment penalty will be assessed. If a return was not filed on time (including allowable extensions of time for filing), a late filing penalty generally will also be assessed against the taxpayer. The late filing penalty is 5% of the unpaid tax shown on the return for each month or part thereof after the due

date (including extensions of time for filing) of the return. The maximum late filing penalty is 25% of the taxes owed. Late payment penalties begin to accrue once the late filing penalty stops accruing or reaches the maximum of 25% of the taxes owed. Late payment penalties are assessed on the unpaid balance each month until either the taxes are paid or the penalties reach the maximum that can be charged by law. The maximum amount of a late payment penalty is 25% of the taxes owed, so between late filing penalties and late payment penalties, the penalties may ultimately total 50% of the taxes owed.

11. During the collection process, the IRS may file liens upon or levies against a delinquent taxpayer's properties. A lien is a claim over property used as security for the tax debt, while a levy actually involves taking the property to satisfy the tax debt. A levy can involve either properties that the taxpayer holds (such as cash, a car, a boat, or a house) or properties in which the taxpayer has a legal interest but which is held by another person or entity (such as wages, retirement accounts, dividends, bank accounts, licenses, rental income, accounts receivable, the cash loan value of a life insurance policy, or commissions). The IRS begins this process by filing a Notice of Federal Tax Lien or Levy. Once a federal tax lien has attached to a taxpayer's property, the IRS is entitled to seize the property by levy.
12. There are a number of payment options that the IRS may be able to offer under particular circumstances for taxpayers that are currently unable to pay a tax debt.

The options include, but are not limited to: extensions of time to pay (up to 120 days if taxpayers can pay in full within the extended time); classifying an account as Currently Non-Collectible (which will temporarily suspend collection activities for taxpayers with no monthly disposable income or assets); installment agreements (which require taxpayers to pay their tax debts in full through manageable monthly payments); OICs (which allow taxpayers to settle their tax debts for less than the amount owed under limited circumstances); abatements of penalties (which reduces or eliminates the penalties upon a showing of reasonable cause); and abatements of interest (which reduces or eliminates interest upon a showing of IRS error). As explained in more detail below, installment agreements are generally available to most taxpayers, while OICs and abatements of penalties and interest are only available in very limited circumstances when specific criteria are met. Relatively few taxpayers actually qualify for OICs or abatements of taxes, interest or penalties.

13. Taxpayers may represent themselves before the IRS. Taxpayers may also have attorneys, certified public accountants, or enrolled agents represent them. When someone besides the taxpayer prepares any documents to be provided to the IRS, however, a Power of Attorney and Declaration of Representative form, IRS Form 2848, must be on file with the IRS. A true and correct copy of IRS Form 2848 is attached hereto as **Dellinger Att. B**. Treasury Department Circular 230 governs tax professionals that assist taxpayers with IRS matters. It requires those practitioners to exercise due diligence in preparing, or assisting in preparing,

documents related to IRS matters. A true and correct copy of Treasury Department Circular 230 is attached hereto as **Dellinger Att. C.**

### OFFERS IN COMPROMISE

14. The IRS's OIC program, 26 U.S.C. § 7122, authorizes the IRS to accept a taxpayer's offer to settle a tax debt for less than the full amount owed. While the overall intent of the program has remained largely the same since first enacted on August 16, 1954, there have been some changes to the program over the years, including implementing an application fee (in 2003) and a non-refundable down payment (in 2006). The OIC program is designed to allow taxpayers who cannot afford to pay their IRS tax debts in full to attempt to settle those debts for less than the amount owed. The IRS will only consider accepting an OIC from a taxpayer after all other payment options, such as monthly installment agreements, have been explored and deemed not viable. Few taxpayers qualify for OICs with the IRS, however, because of the strict eligibility requirements that must be met. Furthermore, there are no tricks or secret strategies that can be used which would assist taxpayers in obtaining OICs from the IRS. Taxpayers either qualify for OICs, or they do not, under the guidelines.
  
15. An OIC is one of two statutory options that allow taxpayers to settle a tax debt for less than the full amount owed. The second statutory option is a closing agreement, under 26 U.S.C. § 7121, which is typically used in situations where the IRS conducts an audit and identifies deficiencies in a tax return. The OIC is

the only program that allows taxpayers to settle their owed taxes at the collection stage for less than the full amount owed. It is only available to taxpayers who cannot pay their taxes in full even after turning over all of their assets, as well as most of their income for the next several years.

16. An offer may be accepted by the IRS based on any of three reasons:
  - A. Doubt as to Collectibility – an OIC based on Doubt as to Collectibility is appropriate when doubt exists that the tax liability could be fully paid during the remainder of the statutory collection period. A taxpayer who cannot pay the full tax amount, through liquidation of assets or by making installment payments prior to the expiration of the collection period, would be a candidate. A taxpayer relying on Doubt as to Collectibility must submit detailed supporting documentation with the OIC application to show the IRS why it would be unable to collect the full amount of the debt during the statutory period.
  - B. Doubt as to Liability – Doubt as to Liability arises when there is a legitimate question as to whether the assessed tax liability is correct. To prove Doubt as to Liability, a taxpayer must submit a specific form, Form 656-L, and provide a satisfactory explanation of why the tax is incorrect.
  - C. Effective Tax Administration (“ETA”) – an ETA OIC will only be considered after the other two options – Doubt as to Collectibility



and Doubt as to Liability – have been rejected. For an ETA offer to be accepted, the taxpayer must show that the collection of the tax would create an economic hardship or would be unfair and inequitable. A taxpayer relying on ETA must provide documentation showing why the collection of the taxes would cause hardship, as well as a written narrative explaining the taxpayer’s special circumstances.

Regardless of the basis for the OIC, the taxpayer bears the burden of showing why the OIC should be accepted. The great majority of OIC requests that are submitted by taxpayers to the IRS are based on Doubt as to Collectibility, in which the taxpayer claims an inability to pay the IRS the full amount of taxes that have been assessed. Stringent requirements must be met, however, in order for a taxpayer to be eligible for an OIC, regardless of the basis upon which the taxpayer relies in making the request.

17. In evaluating a taxpayer’s OIC request based on Doubt as to Collectibility, the IRS follows certain guidelines and considerations which are, for the most part, inflexible and give IRS Revenue Officers who review these requests only limited discretion. For instance, when evaluating a taxpayer’s OIC request, the IRS typically applies its own, published guidelines for living expenses, referred to as “national and local standards,” and does not take into account the taxpayer’s actual living expenses. There has been a lot of criticism over the years about the “averages” allowed by the IRS for living expenses, with complaints that these

standards are unrealistically low and do not provide for sufficient living expenses. Despite those criticisms, the IRS typically relies on the published standards for living expenses when evaluating a taxpayer's OIC request. The IRS rarely deviates from those standards and only does so where unusual circumstances exist.

18. For the IRS to consider an OIC, the taxpayer must have filed all tax returns that are legally required and must be current on all estimated tax payments for the current year. The taxpayer must not be involved in an open bankruptcy proceeding. The taxpayer must then complete IRS Form 656, which is the official compromise agreement. A true and correct copy of IRS Form 656 is attached hereto as **Dellinger Att. D**. Taxpayers requesting an OIC due to Doubt as to Collectibility or ETA also must complete a collection information statement, IRS Form 433-A, which provides financial information and reflects the taxpayer's financial situation for the three months immediately prior to the date of the OIC submission. If the taxpayer is filing an OIC on behalf of a business, IRS Form 433-B must be filed. True and correct copies of IRS Forms 433-A and 433-B are attached hereto as **Dellinger Att. E**. Taxpayers requesting an OIC due to Doubt as to Liability must complete IRS Form 656-L. A true and correct copy of IRS Form 656-L is attached hereto as **Dellinger Att. F**.

19. When applying for an OIC, in addition to specifying the basis for the OIC request, a taxpayer must specify the type of payment offer being made. There are three

payment options: (1) a Lump Sum Cash Offer, which requires the offer amount to be paid in five or fewer installments; (2) a Short Term Periodic Payment Offer, which requires the offer amount to be paid in installments within 24 months from the date the IRS receives the offer; and (3) a Deferred Periodic Payment Offer, which requires the offer amount to be paid in installments over the remaining statutory period for collecting the tax.

20. Effective on July 16, 2006, the IRS began requiring a non-refundable, initial payment with any OIC application as a result of the Tax Increase Prevention and Reconciliation Act of 2005. Depending on the payment option being proposed, the taxpayer must submit with the OIC application either 20% of the full amount being offered (if filing for a Lump Sum Cash Offer) or the first installment payment (if filing for a Short Term or Deferred Periodic Payment Offer). If the IRS rejects the OIC, it keeps the initial payment and applies it to the taxpayer's outstanding tax debt. Since November 1, 2003, the taxpayer has also been required to pay a \$150 OIC application fee. Certain low-income taxpayers may be exempt from submitting the up-front payment and application fee; to establish qualification for the exemption, a taxpayer must submit Form 656-A certifying their income level.

21. The determination of whether an OIC is appropriate is formulaic and involves little, or no, discretion on the part of the IRS's Revenue Officers who review the OIC requests. In general, the minimum acceptable offer is the amount equal to

the value that is estimated to be realized from a liquidation of the taxpayer's assets plus an amount equal to 60 months of available funds after deducting from a taxpayers' prospective income stream (based on current income) the allowable expenses for living purposes. If an all cash offer is to be made, then instead of 60 months of available funds, the additional amount is based on 48 months of available income. As a result, many, if not most, offers require a taxpayer to obtain funds from a third party (e.g., a family member) to make an all cash offer. The primary, and generally only, discretion that an IRS Revenue Officer can engage in with regard to approval is in evaluating the realizable value of the assets used to determine the first part of the offer and evaluating the future earnings of the taxpayer when calculating the available monthly funds portion of the offer. For example, a Revenue Officer may consider reduced, or elimination of, earnings from employment where a taxpayer is nearing retirement age or where a self-employed professional has diminished income expectations for a variety of reasons (e.g., loss of a key client or customer).

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22. An OIC application is subject to several levels of review at the IRS. In addition to considering the information in the application, IRS agents may conduct independent research into the applicant's assets, including reviewing recent property transfers and ascertaining if there is possible hidden ownership of assets. The IRS also evaluates the present value of the taxpayer's future income. If a taxpayer's net equity in assets exceeds the amount being offered, the OIC will be rejected.

23. When the IRS accepts the taxpayer's OIC, the taxpayer contractually agrees to make timely filings of tax returns and timely payments of all taxes until the latter of five years or until the agreed upon offer amount is paid in full. If the taxpayer is not timely in filings and payments, the accepted OIC may be considered in default and the full amount, plus penalties and interest, becomes due. The decision about whether to accept or reject an OIC is left to the discretion of the Secretary of the Treasury. Under the rules in effect since July 16, 2006, an OIC will be deemed accepted if it is not withdrawn, returned, or rejected within 24 months after the IRS receives it. An OIC application also stops the 10-year statute of limitations from running on the collection of a tax debt. During the period an offer is under consideration by the IRS, the 10-year collection statute is suspended.
24. There has been considerable criticism of the IRS over the years due to the stringent requirements of the program. In fact, due to these rules, the number of OIC applications submitted by taxpayers to the IRS has declined in recent years and relatively few OICs have been accepted by the IRS. According to the 2009 Annual Report to Congress by the National Taxpayer Advocate, who is the head of the Taxpayer Advocate Service<sup>1</sup>, between 2001 and 2009, OIC applications declined from 125,390 in 2001 to only 52,102 in 2009. In addition, in 2001, 34% of OIC applications were accepted by the IRS, while in 2009 only 25% of OIC applications were accepted. The average acceptance rate for OICs for the years

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<sup>1</sup> The Taxpayer Advocate Service is an independent organization within the IRS, whose mission is to help taxpayers resolve problems with the IRS.

2001 through 2009 was approximately 21%. A true and correct copy of the Written Statement of Nina E. Olson, National Taxpayer Advocate, 2009 Annual Report to Congress on March 16, 2010, is attached hereto as **Dellinger Att. G.**

25. If an OIC is rejected, the taxpayer has 30 days from the date of the rejection to file an appeal of the denial to the IRS Office of Appeals. Taxpayers are rarely successful in the appeals process in overturning a decision of IRS collection officers and personnel to reject an OIC.

26. A taxpayer must provide extensive documentation to the IRS in order to effect an OIC. To the extent a taxpayer requests special consideration for an allowable expense in calculating the monthly living expense, both documentation of the need for, and the amount of, the expense must be provided. Proof of the valuation of assets must all be provided in many cases. Finally, taxpayers must provide considerable information with respect to banking and similar activities. Because so much information is needed in order to submit an OIC, a taxpayer's

qualification, or lack thereof, for an OIC cannot generally be determined from a short telephone conversation. Most of the time, a taxpayer's documents need to be reviewed in order to determine whether the taxpayer potentially qualifies for an OIC.

27. Generally, only taxpayers faced with current and continuous dire circumstances and whose tax debts significantly exceed their assets and their future earning

power will be able to avail themselves of an OIC to settle a tax debt. Somewhat greater leniency is permitted when an OIC is submitted to compromise only a penalty, but this will depend on the nature and circumstances of the penalty assessment, for example whether the taxpayer can establish that some reasonable cause existed for the act or omission that gave rise to the penalty.

28. As a CPA who has been involved in income tax controversy and tax debt resolution matters for many years, I am aware that there are businesses in the United States that prey upon people who have significant tax debts by making misleading, and sometimes false, promises that they can easily settle such taxpayers' debts for a small portion of what is owed. These businesses are sometimes referred to as "OIC mills." They charge their clients significant monies and are unable to follow through on their initial representations to those clients. These businesses are unable to perform as promised because, as described above, there are strict criteria that must be met in order to obtain tax settlements with the IRS. The IRS has issued at least two, and possibly more, consumer alerts to warn taxpayers about these types of businesses. In releases issued in February and October 2004, the IRS advised taxpayers to beware of promoters' claims that tax debts can be settled for "pennies on the dollar" through the IRS's OIC Program. In those releases, the IRS warned that some unscrupulous promoters charge excessive fees to taxpayers that have no chance of meeting the requirements for an OIC, and informed the public that all payment options must be explored before an OIC is submitted to the IRS. Copies of the IRS's February

3, 2004, and October 25, 2004, releases are attached hereto as **Dellinger Atts. H** and **I**, respectively.

### PENALTY AND INTEREST ABATEMENTS

29. The IRS has the authority to impose civil penalties and interest on taxpayers' delinquent tax debts; it also has the authority to abate penalties and interest in appropriate circumstances. As explained in more detail below, very specific criteria must be met in order for the IRS to accept an abatement request. Consequently, the IRS accepts relatively few penalty or interest abatements each year.

#### Penalty Abatements

30. The IRS considers requests for penalty abatement on a case-by-case basis, but circumstances under which the IRS would consider abating penalties include: (1) reasonable cause; (2) correction of error; (3) statutory exceptions; and (4) administrative waivers. Although the IRS's revenue agents have discretion in whether to grant penalty abatements, they more often deny, and rarely grant, taxpayers' penalty abatement requests.
31. The most common basis for a penalty abatement request is the existence of reasonable cause. According to the Internal Revenue Manual, "reasonable cause" exists when "the taxpayer exercises ordinary business care and prudence in determining their tax obligations but nevertheless failed to comply with those



obligations.” The burden is on the taxpayer to prove that these circumstances exist.

32. Circumstances that may warrant a penalty abatement due to reasonable cause include death or serious injury, fire or natural disaster, inability to obtain records, mistake, reliance on erroneous advice, and ignorance of the law. The IRS will consider the following in determining whether reasonable cause exists: (1) what happened and when did it happen?;(2) during the period of time the taxpayer was non-compliant, what facts and circumstances prevented the taxpayer from filing a return, paying a tax, and/or otherwise complying with the law?; (3) how did the taxpayer handle the remainder of the taxpayer’s affairs during this time?; and (4) once the facts and circumstances changed, what attempt did the taxpayer make to comply? The IRS may, in some cases, abate late payment penalties under the reasonable cause exception where the taxpayer can establish that the taxpayer’s lack of funds (e.g. loss of employment) contributed to the inability to pay.
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- However, it is my experience in over 35 years of handling collection matters, that penalty abatements of this nature are rare.

33. The IRS also may consider abating a taxpayer’s penalties when the taxpayer can show that the penalties were the result of erroneous advice received from the IRS itself. To qualify, the taxpayer must demonstrate to the IRS that he: (1) asked the IRS for advice on a specific issue, (2) gave the IRS complete and accurate

information, (3) received advice from the IRS, (4) relied on the advice that the IRS gave, and (5) was penalized based on the advice that the IRS provided.

34. The last two grounds for a penalty abatement – statutory exceptions and administrative waivers – are available only in very limited circumstances. Statutory exceptions allowing for penalty abatements are set out in the Internal Revenue Code. Section 7508 of the Internal Revenue Code, for example, states that certain penalties may be “Postponed by Reason of Service in Combat Zone.” Administrative waivers are considered when the IRS formally deems that administrative relief from a penalty is appropriate; for example, when there has been a delay by the IRS in providing required forms or publishing guidelines.
35. Given the limited circumstances under which the IRS will abate a taxpayer’s penalties once an assessment has become final, few taxpayers qualify for penalty abatements, whether by informal negotiation with a Revenue Officer or through the formal OIC or abatement process.

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#### Interest Abatements

36. In extremely limited circumstances, the IRS also will agree to abate the interest that has accrued on a tax debt. This requires a showing by the taxpayer that there was an unreasonable error or delay by the IRS in performing a managerial or ministerial act. According to the IRS’s Instructions for Form 843, “managerial act” means:

an administrative act that occurs during the processing of your case involving the temporary or permanent loss of records or the exercise of judgment or discretion relating to management of personnel. A decision regarding the proper application of federal tax law is not a managerial act.

A decision made by a supervisor to, for instance, send a revenue agent to a training course and not reassign that agent's cases, resulting in a delay of some sort, would be a managerial act. According to the Instructions, "ministerial act" means:

a procedural or mechanical act that does not involve the exercise of judgment or discretion and that occurs during the processing of your case after all prerequisites of the act, such as conferences and review by supervisors, have taken place. A decision regarding the proper application of federal tax law is not a ministerial act.

An example of a ministerial act would be a delay in mailing out a notice of deficiency to a taxpayer after all necessary relevant prerequisites are completed.

37. Situations when an interest abatement may be appropriate include when a taxpayer's paperwork is lost by an IRS employee, or when an IRS employee delays in processing a taxpayer's paperwork. Taxpayers petitioning for interest abatement must be able to show that they did not cause or have a significant impact on the IRS's error or delay. Given the fact that a taxpayer must establish there was error on the part of the IRS, interest abatements are rarely given by the IRS.

Applying for Penalty and Interest Abatements

38. Taxpayers applying for either a penalty or interest abatement must fill out IRS Form 843 and include an explanation of why the request should be allowed. A true and correct copy of IRS Form 843 is attached hereto as **Dellinger Att. J.**

INSTALLMENT AGREEMENTS

39. Taxpayers who cannot immediately pay the full amount of their tax debts may enter into installment agreements with the IRS. Installment agreements allow taxpayers to make specific, agreed upon, monthly payments until their entire debts are satisfied. In order to be eligible for an installment agreement, a taxpayer cannot have any delinquent tax returns. Unlike OICs and abatements, installment agreements are relatively easy to obtain. Installment agreements are more expensive than paying all the taxes owed when due, however, because, as with most revolving credit arrangements, the IRS continues to charge interest and penalties on the unpaid portion of the debt. In addition, when the IRS accepts an installment arrangement, it may still file a Notice of Federal Tax Lien to protect the government's interest until the tax debt is paid in full.

40. Installment agreements are relatively easy for taxpayers to obtain from the IRS and do not generally require the assistance of a tax practitioner to obtain them. Taxpayers owing taxes, penalties, and interest that total \$25,000 or less may request an installment agreement online at <https://sa1.www4.irs.gov/irfof/lang/en/eiaTPstatus.jsp>. Unless the IRS determines

that additional information or paperwork is needed, the taxpayer will receive immediate notification of approval. A taxpayer can also set up an installment agreement by telephone, or by mailing to the IRS a Request for Installment Agreement, IRS Form 9465. A true and correct copy of IRS Form 9465 is attached hereto as **Dellinger Att. K**.

41. Taxpayers who owe taxes, penalties, and interest that total more than \$25,000 must apply by mail and fill out a Collection Information Statement, IRS Form 433-F, in addition to the Request for Installment Agreement, IRS Form 9465. A true and correct copy of IRS Form 433-F is attached hereto as **Dellinger Att. L**.
42. Taxpayers approved for installment payments are charged a \$105 user fee. Also, until the tax debt has been paid in full, any tax refunds owed to the taxpayer will be applied against the outstanding debt.
43. The IRS changed its guidelines in October 2004 to allow installment agreements to cover a 10-year period (the statute of limitations for collection of tax debts) plus an additional 72 months. Prior to that, installment agreements covered a much shorter period, 60 months in total. In January 2005, the IRS implemented an additional payment option called the partial payment installment agreement, which allows, under limited circumstances, the partial payment of the tax liability if the agreed upon installment payments during the collection statute period do not fully pay the tax debt, including interest and penalty assessments. However, since

the IRS expanded the amount of time for making installment payments to 10-years plus 72 months, these arrangements are not often favorable to taxpayers in reducing their total tax liabilities.

### REVIEW OF TAX DEBT SCENARIOS

44. The FTC asked me to review four scenarios and determine whether, in my expert opinion, under the facts presented in each scenario, the taxpayer would qualify for an OIC or abatement of penalties or interest. I was told that each of these scenarios was used during an undercover telephone call to American Tax Relief ("ATR"). The scenarios are detailed below. Also listed are the resolutions for which the ATR sales representatives claimed each caller qualifies. I have determined that, based on the scenarios presented, none of the taxpayers qualify for the resolutions offered to them by the ATR sales representatives.

45. Scenario 1:

A. Facts:

- Male taxpayer, thirty-two years of age and single;
- \$70,000 in tax liabilities for the years 2005 through 2008;
- Financial Status:
  - Gross Monthly Income: \$3,700 (or \$7,400)<sup>2</sup>
  - Current Mortgage: \$0 (home valued at \$220,000)
  - Condo Monthly Fees: \$350
  - Utilities: \$250-300 (monthly)
  - Car Loan: \$0 (owns 2009 Infiniti)
  - Health Insurance: \$220 (monthly)
  - Credit Card Debt: \$0
  - Life Insurance: none

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<sup>2</sup> There was a discrepancy in the discussion of the taxpayer's monthly income.

401(k): \$80,000

Amount in checking and savings: \$22,000-22,500

- B. ATR Qualification: Penalty/Interest Abatement.
- C. Given the foregoing facts, neither a penalty nor interest abatement would be accepted by the IRS regardless of whether the taxpayer's gross monthly income was \$3,700 or \$7,400. The taxpayer in this case has ongoing employment sufficient to provide for his living expenses and has ample assets in the form of equity in his property, available IRA funds, and equity in property to fully discharge the liabilities including interest and penalties. In fact, in this example, the taxpayer's net assets are in excess of five (5) times the unpaid tax liabilities.

46. Scenario 2:

A. Facts:

- Male taxpayer, thirty-five years of age and single;
- ~~\$34,920.06 in tax liabilities for the year 2007;~~
- Financial Status:
  - Gross Monthly Income: \$4,400
  - Rent: \$1,600 (monthly)
  - Utilities: \$350 (monthly)
  - Car Loan: \$250 (2007 Honda Civic) (monthly)
  - Health Insurance: \$126 (bi-weekly)
  - Credit Card Debt: \$0
  - Life Insurance: none
  - 401(k): \$0
  - Amount in checking and savings: \$6,500

B. ATR Qualification: OIC

C. Given the foregoing facts, the IRS would not accept an OIC from this taxpayer. In this situation, the taxpayer does not have sufficient net assets to fully discharge the liabilities. However, in determining an “acceptable” OIC, the taxpayer is required to calculate monthly income available for payment of the tax liability. If that monthly amount multiplied by sixty (60) exceeds the tax liability, interest, and taxes proposed to be compromised, there is no compromise available. The taxpayer is capable of entering into an installment agreement that will fully discharge the outstanding tax, interest and penalty obligations – including future penalty and interest accruals – within the ten (10) year statutory collection period.

47. Scenario 3:

A. Facts:

- Male taxpayer, married, but filed separately from wife;
- Approximately \$22,000 in tax liabilities and fees, incurred between 2003 and 2007 as a result of an inheritance and not reporting income;
- Received a Notice and Demand for Payment within the last ten (10) days, but does not yet have any liens or garnishments;
- Tax returns were filed and paid in full;
- Financial Status:
  - Annual Income: \$40,000
  - Monthly Income: \$3,300
  - Rent: \$1,500 plus \$200 utilities (monthly)
  - Car Loan: \$300 (2006 Mazda) (monthly)
  - Health Insurance: \$90 (monthly)
  - Credit Card Debt: \$3,000
  - Life Insurance: \$0



Stocks/401(k): \$0  
Health bills, student loans: \$0  
Amount in checking and savings: \$8,000

- B. ATR Qualification: OIC
- C. Given the foregoing facts, the IRS would not accept an OIC from this taxpayer. The determination whether or not the taxpayer would qualify for an OIC in this situation is substantially the same as in scenario 2, above. Regardless of the taxpayer's current actual living expenses, when evaluating the taxpayer's ability to pay a tax liability for purposes of qualifying for an OIC, living expense deductions from income (i.e., "allowable expenses") are determined by using tables published by the IRS. The "allowable living expenses" are subtracted from the taxpayer's actual income and the remaining amount is the monthly income available to pay the liability. This monthly amount is multiplied by sixty (60) and the result added to the taxpayer's net asset amount (i.e., value of assets owned reduced by debt). If the combined amount exceeds the tax liability plus interest and penalty accruals, the taxpayer does not qualify for an OIC.

48. Scenario 4:

A. Facts:

- Male taxpayer, thirty-seven years of age and single;
- \$32,000 in tax liabilities and fees, incurred as a result of under-reporting commission payments, after filing self-prepared taxes between 2000 and 2007;

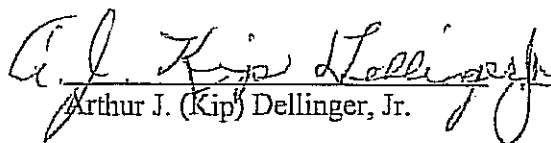
- Received a Notice and Demand for Payment within the last ten (10) days, but does not yet have any liens or garnishments;
- Tax returns were filed and paid in full;
- Financial Status:
  - Annual Income: \$90,000
  - Monthly Income: \$4,800
  - Assessed Property Value: \$250,000
  - Equity: \$50,000
  - Mortgage: \$200,000 (\$1,700 plus \$180 utilities monthly)
  - Car Loan: \$0 (2004 Acura TL)
  - Health Insurance: \$100 (monthly)
  - Credit Card Debt: \$3,000
  - Student loans: \$8,000 (\$250 monthly)
  - Life Insurance: \$0
  - 401(k): \$20,000
  - Amount in checking and savings: \$15,000

B. ATR Qualification: Penalty Abatement

C. Given the foregoing facts, a penalty abatement would not be accepted by the IRS. The determination whether or not the taxpayer would qualify for an OIC in this situation is substantially the same as in scenarios 2 and 3. The taxpayer's net assets and available monthly income (determined using the allowable living expense standards and multiplying by sixty (60)) are sufficient to fully pay the tax liability, penalties, and interest, including future interest and penalty accruals.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 2, 2010.

  
 Arthur J. (Kip) Dellinger, Jr.