



Offer in Compromise

For Liabilities Not Fixed and Final, and Subject to Administrative Review

Use Form DTF-4.1 instead if you do not have formal protest or appeal rights (see instructions).

1. Name of taxpayer(s)/trade or business name(s)		Telephone number ()	Social security number(s)
Physical home address		Employer identification number (EIN)	
Mailing address (if different from above, or if a PO box number)		Entity type(s)	
Business address		<input type="checkbox"/> Individual	
Name of taxpayer's representative (attach power of attorney; see instructions)		Telephone number ()	<input type="checkbox"/> Partnership
Address of taxpayer's representative		<input type="checkbox"/> Corporation	
		<input type="checkbox"/> Other _____	

2. What is the offer based on? Mark an **X** in one or both boxes (see instructions)

Doubt as to liability Doubt as to collectibility **or** Collection in full would cause undue economic hardship (must include Form DTF-5)

3. Total amount offered (must be more than \$0) \$

Is the sum offered in compromise borrowed money? Yes No
(If Yes, enter name and address of lender and list of collateral, if any, pledged to secure the loan)

You do not have to include payment with this application. However, if you do, and we do not accept your offer, we will use the money toward the amount you owe.

4. Liabilities and payments
(Attach additional pages if needed, and submit copies of all notices)

Assessment I.D.	Type of tax or liability	Liability period	Amount due	Total payments to date

5. Provide the facts and reasons supporting the grounds for acceptance of this offer (see instructions)

6. Conditions *(please read)*

- 6A.** It is agreed (a) that the Commissioner of Taxation and Finance (“the Commissioner”) shall keep all payments, sums collected, and other credits made to the liabilities asserted for the periods covered by this offer, and (b) that the Commissioner shall keep any and all amounts to which taxpayers may be entitled under the Tax Law, due through overpayments of any tax or other liability, offsets, credits, or funds payable to the taxpayers that are available to New York State (for example, lottery offsets and unclaimed funds), for periods ending before, or within, or as of the end of the calendar year in which this offer is accepted (and which are not in excess of the difference between the liability sought to be compromised and the amount offered).
- 6B.** Any payments made under the terms of this offer shall be applied, unless otherwise agreed in writing, to the liabilities of the taxpayer(s) in the order determined upon by the Commissioner.
- 6C.** It is further agreed and consented to by the taxpayer(s) that upon notice of the acceptance of this offer, the taxpayer(s) shall have no right to contest in the Bureau of Conciliation and Mediation Services, the Division of Tax Appeals, any court, or otherwise, at any time, the amount of the liability sought to be compromised. The Tax Department will not compromise any liability, nor satisfy any warrant, until all obligations of each taxpayer under the compromise agreement, or any collateral agreement, are completely performed and satisfied. In the event of a default by any taxpayer on the compromise agreement, or on any collateral agreement, or if this is a deferred payment offer and there is a default in payment of any installment of principal or interest due under its terms, or a default on any other term that the taxpayer(s) may have agreed upon with the Commissioner for acceptance of the deferred payments, New York State, at the option of the Commissioner or an official designated by him or her, may (a) proceed immediately by suit to collect the entire unpaid balance of the offer; or (b) proceed immediately by suit to collect as liquidated damages an amount equal to the liability sought to be compromised, minus any payments already received under the terms of the offer, with interest on the unpaid balance at the annual rate(s) as established

under the Tax Law and compounded from the date of default; or (c) disregard the amount of the offer and apply all amounts previously deposited under the offer against the amount of the liability sought to be compromised, immediately and without further notice file a warrant thereon and proceed to collect the balance of the original liability. The taxpayer(s) agrees that any pending conciliation conference or proceedings before the Division of Tax Appeals, or any right thereto, pursuant to Tax Law sections 170, 171, and Article 40 thereof, and the regulations adopted pursuant thereto, on the liability compromised, are finally and irrevocably concluded or waived, as the case may be.

- 6D.** It is understood that this offer will be considered and acted upon in due course and does not relieve the taxpayer(s) from the liability sought to be compromised, unless and until the offer is accepted in writing by the Commissioner, and there has been full compliance with the terms of the offer and any collateral agreements.
- 6E.** Taxpayers waive the benefit of any statute of limitations applicable to the assessment and collection of liabilities sought to be compromised, and agree to the suspension of the running of the statutory period of limitations on assessment and collection for the period during which this offer is pending, and for one year thereafter. For these purposes, the offer shall be deemed pending from the date of acceptance of the waiver of the statutory period of limitations by an authorized Tax Department official, until the date on which the offer is formally accepted, rejected, or withdrawn in writing.
- 6F.** Taxpayers waive any statute of limitations defenses to the assessment and collection of the liability sought to be compromised, and further waive any statute of limitations defenses against the issuance of new assessment(s) for the compromised liability in the event any taxpayer fails to comply with the terms of the offer in compromise.
- 6G.** Taxpayers also agree to forfeit any current capital loss or net operating loss credits taken on any future New York State return.
- 6H.** Taxpayers agree that during the five-year period, beginning with the date we accept the offer, to comply with all provisions of the New York State Tax Law regarding filing tax returns and paying all required taxes on all required returns.

7. Signatures

Under penalties of perjury, I declare that I have examined this application, including accompanying documents, and to the best of my knowledge it is true, correct, and complete. I also affirm that I have read, understand, and agree to the terms and conditions above.

I authorize the New York State Department of Taxation and Finance (DTF) to contact certain third parties, including but not limited to financial institutions and consumer credit reporting agencies, and to obtain my consumer credit report for the purpose of verifying the information I provided to DTF for determining my eligibility for the Offer-in-Compromise Program. In addition, I authorize DTF to use my social security number when requesting my credit history from consumer reporting agencies or when verifying the information provided. I understand that DTF will not notify me about which third parties, if any, are contacted by DTF as part of this review process.

Pursuant to Tax Law section 171, subdivision eighteenth (a), the undersigned submits this offer to the Commissioner to compromise any liabilities.

Date

Signature of taxpayer(s)

Date

Signature of taxpayer(s)

Corporations: See instructions on page 4, *Section 7*.

Instructions

Use the correct form

- **Use Form DTF-4, Offer in Compromise: For Liabilities Not Fixed and Final, and Subject to Administrative Review**, to submit your request to compromise liabilities, where you still have formal protest or appeal rights.

You may submit Form DTF-4 if there is doubt as to liability, or doubt as to collectibility of the full amount owed (including, for individuals only, when full collection would cause undue economic hardship). For an explanation of *doubt as to liability* and *doubt as to collectibility*, see the instructions for *Section 2*.

- **Use Form DTF-4.1, Offer in Compromise: For Fixed and Final Liabilities**, where you do not have any formal protest or appeal rights. You do not have these rights if you:
 - owe tax, interest, or penalties due to: a math or clerical error on a return, a change the IRS made to your federal return, or your failure to pay on time the tax that you reported due on your return, or
 - received a *Statement of Proposed Audit Changes*.

Your liabilities are fixed and final, and may be established by a valid warrant.

Considerations for using Form DTF-4

You must be in compliance with all paying and filing requirements for periods not included in your offer. This includes estimated payments, tax deposits, and similar requirements.

Submitting Form DTF-4 does not automatically suspend pending proceedings in the Bureau of Conciliation and Mediation Services, nor does it suspend the time for you to take any action about an assessment.

Also, submitting Form DTF-4 does not affect the interest and penalties that continue to accrue on your liabilities. Interest is due at the rate set by the Tax Law, from the date of the notice or agreement until we receive full payment.

We may require a written collateral agreement or other security, to protect the Tax Department's interest.

Generally, a taxpayer may make only one offer in compromise for a particular liability for a particular period.

If we accept your offer

If the Tax Department accepts your offer, and you satisfy all the terms of the offer (for example, you paid in full the offer and complied with the terms of any collateral agreement), we will eliminate the remaining balance of your liabilities included in this offer.

Taxpayer's representative

If you have a representative, you must include a completed power of attorney. We recommend POA-1, *Power of Attorney*, available at www.tax.ny.gov. If you use another power of attorney, it must include the same information as the POA-1.

Estates

When Form DTF-4 is submitted by an estate fiduciary (executor or administrator), the fiduciary must submit a copy of the appropriate court appointment (for example, letters testamentary or letters of administration) or, if there is no court appointment, appropriate documents as requested by the Tax Department. If the offer in compromise will be handled by the fiduciary's duly

authorized representative, and the representative will sign on page 2 on behalf of the fiduciary, the fiduciary must also submit a completed power of attorney along with the appropriate documents. We recommend Form ET-14, *Estate Tax Power of Attorney*. If you use another power of attorney form, it must include the same information as the ET-14.

Specific instructions

Section 1. Taxpayer information

Enter the full name and phone number of the taxpayer(s). If the taxpayer is a business, enter the name of the business or its trade name (or both). If this is a joint income tax liability, both spouses may submit one application and enter both names. However, **for any other type** of joint liability, such as a partnership, each must submit **separate DTF-4 forms**.

Enter the taxpayer's social security number, or, for a business, the employer identification number.

Enter the taxpayer's physical home address, mailing address if different or a PO box, and business address (if applicable).

Mark an **X** in a box to indicate entity type(s). If *Other*, fill in the blank.

If the taxpayer has a representative, enter the name, phone number, and address of the representative, and attach a completed power of attorney.

Section 2. Basis for compromise

Mark an **X** to indicate what the offer is based on.

- **Doubt as to liability** (you don't agree with the amount the Tax Department claims you owe).

To support your claim, you must submit affidavits showing the material facts of the case. You must also include certified copies of the documents of record, if any; true copies of all other papers and documents referred to in any affidavit; and a full list of the statutes, regulations, and case law you are relying on. You are responsible for completely presenting all your facts and legal arguments. We may require you to provide additional documentation from third parties.

- **Doubt as to collectibility** (you have insufficient assets and income to pay the full amount), **or** where collection in full would cause undue economic hardship (individuals only).

For there to be doubt as to collectibility, you must show that you have been discharged in bankruptcy, you are insolvent, or (for individuals only) that collection in full would cause you undue economic hardship.

You are considered insolvent if all your liabilities (including your tax debt) exceed the fair market value of your assets.

Undue economic hardship generally means that you are unable to pay reasonable basic living expenses, which are those providing for the health, welfare, and production of income for your family. We use Internal Revenue Service (IRS) standards to help determine allowable living expenses.

We also consider other factors, including the taxpayer's age, employment status, and employment history; any inability to earn income because of long-term illness, medical condition, or disability; and any obligation to dependents.

All offers based on doubt as to collectibility or where collection in full would cause the taxpayer hardship, **must include:**

- a completed Form DTF-5, *Statement of Financial Condition and Other Information* (available at www.tax.ny.gov), including copies of:
 - your last three federal income tax returns,
 - a credit report less than 30 days old, and
 - your last 12 months of statements from your bank or financial institution.

Section 3. Amount offered

Enter the total amount you intend to offer. You must offer more than \$0, and you cannot include any amounts previously paid or collected against the liabilities.

For an offer based on doubt as to liability, the amount acceptable depends upon the degree of doubt found in the particular case.

For an offer based on doubt as to collectibility, the amount must be a figure we **realistically** expect we could collect within a reasonable period of time. It is based on the total value of assets and the amount we could expect to collect from anticipated future income. Otherwise, the amount proposed must be justified by information you submit.

Mark an **X** in the Yes box if all or part of the money you are offering for the compromise is borrowed. If Yes, enter the name and address of the source of the borrowed money, and include a list of any collateral you have pledged to secure the loan.

Section 4. Liabilities and payments

List all unpaid liabilities administered by the Tax Department you wish to compromise. You may not submit an offer for a tax year or period that has not been assessed. Include copies of all notices that you list. You can view all your unpaid liabilities on your *Online Services* account. If you do not have an *Online Services* account, you can visit our website at www.tax.ny.gov and create one.

In the *Type of tax or liability* column, indicate whether the notice is for income, sales, withholding, or some other tax or liability.

If, for a particular liability, you are both personally liable and jointly liable with another individual or separate entity such as a corporation, you must submit your own Form DTF-4. For joint liabilities, if only one taxpayer's offer is accepted and paid, the remaining taxpayers remain liable for the outstanding balance of the liability. An offer we accept forgives further payment only for the taxpayer whose offer was accepted.

Section 5. Grounds for the offer

Provide all the facts and reasons supporting the grounds for acceptance of your offer. If needed, attach additional pages, and copies of appropriate documents, to fully and completely explain the details of your offer. For individuals only, if your offer is based on undue economic hardship, explain your situation and provide supporting documentation.

Section 6. Conditions

By submitting this application, you have read, understand, and agree to the terms and conditions in this section.

Section 7. Signatures

Sign and date. If you and your spouse seek to compromise a joint income tax liability, **both must sign**.

Corporations: Enter the corporate name. An authorized corporate signatory must sign. Print the signatory's name and title immediately below the signature.

Mailing your Form DTF-4

Along with your completed Form DTF-4, be sure to include copies of all notices listed in Section 4, and all supporting documents.

If your offer is based on **doubt as to collectibility or hardship**, remember to include a completed Form DTF-5. Include copies of your federal income tax returns for the last three years, copies of the last 12 months of statements from your bank or financial institution, and all other material required by Form DTF-5.

Mail all documents to:

**NYS TAX DEPARTMENT
CED OFFER IN COMPROMISE UNIT
W A HARRIMAN CAMPUS
ALBANY NY 12227-5100**

More information

These instructions are intended only as a guide for preparing Form DTF-4. For an overview, see Publication 220, *Offer in Compromise Program*. For specific details, see regulations Title 20 NYCRR Part 5000, *Compromises*, available at www.dos.state.ny.us/info/nycrr.html.

For questions, call (518) 591-5000. For forms and more information, see www.tax.ny.gov.

Checklist

- Is DTF-4 the correct form for you?
- If you have a representative, did you enter their name, address and phone number? Did you include a completed power of attorney?
- Did you enter an offer of more than \$0?
- If your offer includes borrowed money, did you enter the lender's name and address, and collateral, if any?
- Did you include copies of notices of unpaid liabilities?
- Did you include copies of all appropriate documents to support your offer? If you fail to submit all required statements and documents, we will not process your application.
- Did you sign and date the bottom of page 2?
- If your offer is based on **doubt as to collectibility or hardship**, did you include a completed Form DTF-5, including copies of:
 - your last three federal income tax returns (if you are not required to file, include an explanation),
 - a credit report less than 30 days old, and
 - your last 12 months of statements from your bank or financial institution?