

INTERIM IRM PROCEDURAL UPDATE

DATE: 07/12/2012

NUMBER: SBSE-05-0712-1363

SUBJECT: Tax and Student Loan Expense Updates

AFFECTED IRM(s)/SUBSECTION(s): 5.19.1.6.2.6

CHANGE(s):

IRM 5.19.1.6.2.6 - Other Necessary Expenses, revised table under (5). Inserted new (6) and renumbered remaining paragraph accordingly.

5. The following are examples of some expenses that may be determined other necessary expenses:

Expense	Necessary	Notes/Tips
Accounting and legal fees	<ul style="list-style-type: none">a. Representation before the Service or they meet the necessary expense testsb. The amount should not be excessive and must be reasonable	<ul style="list-style-type: none">a. Disallow any other accounting or legal feesb. Disallow costs not related to remaining current or solving current liability
Charitable contributions EXAMPLE: Donations to tax exempt organizations	Meets the necessary expense test or is a condition of employment EXAMPLE: A minister is required to tithe according to his employment contract	<ul style="list-style-type: none">a. Disallow any other charitable contributions not considered necessaryb. Review the employment contract
Child Care NOTE: Baby-sitting,	<ul style="list-style-type: none">a. Meets the necessary expense test; only	Ask how old the child is

day care, nursery, and pre-school	<p>reasonable amounts are allowed</p> <p>b. Costs of child care can vary greatly; do not allow unusually large child care expenses if more reasonable alternatives are available</p>	NOTE: Find out if the taxpayer's spouse is employed
<p>Court-ordered Payments</p> <p>EXAMPLE: Alimony, child support, state, and other court ordered payments</p>	<p>a. If court-ordered payments are being paid, they are allowable</p> <p>b. If payments are not being made, do not allow the expense.</p> <p>c. Child support payments for natural children or legally adopted dependents may be allowed</p>	<p>a. Review the agreement or court order</p> <p>b. Verify payments are being made</p>
<p>Dependent Care</p> <p>EXAMPLE: For the care of the elderly, invalid or handicapped</p>	Considered necessary if there is no alternative to the taxpayer paying the expense	Intentionally left blank
Education	<p>a. Required for a physically or mentally challenged child and no public education providing similar services is available</p> <p>b. Allowed only for the taxpayer and only if required as a condition of employment</p>	EXAMPLE: A teacher whose employment is conditional upon completion of a graduate program
Involuntary Deductions	Union dues, uniforms, work shoes, etc. that are a	Verify it is a requirement of the

	condition of employment	job
Life insurance	a. Is limited to term policies b. Life insurance used as an investment is not a necessary expense	Check on whole life policy; whole life policies should be reviewed as an asset for borrowing against
Secured or legally perfected debts	Meets necessary expense test and is filed, executed and superior to the federal tax lien	The taxpayer must substantiate the payments are being made
Current Year Taxes	a. Current federal, FICA, Medicare, state* and local taxes are allowed regardless of whether the taxpayer made them in the past or not. NOTE: Place withholding amounts on the AMS Income screen in the appropriate box. NOTE: *The following states do not have a state income tax: <ul style="list-style-type: none"> • Alaska (AK) • Florida (FL) • Nevada (NV) • New Hampshire (NH) • South Dakota (SD) • Tennessee (TN) • Texas (TX) • Washington (WA) 	Federal taxes do not need to be verified if the amounts are within 20% of the amounts on CC IRPTR , CC RTVUE , CC BRTVU or CC TRDBV
Delinquent State or	Payments for delinquent	See IRM

Local Taxes	<p>state and local (county or municipal) tax liabilities may be allowed in certain circumstances:</p> <ul style="list-style-type: none"> ○ When a taxpayer does not have the ability to full pay the tax liability. ○ When a taxpayer provides complete financial information. ○ When a taxpayer provides verification of the state or local tax liability and agreement (if applicable). 	5.19.1.6.2.6(6), <i>Other Necessary Expenses</i> , for determining allowable amount.
Unsecured debts	<ul style="list-style-type: none"> a. Minimum payments may be allowed if the taxpayer substantiates and justifies the expense b. The necessary expense test of health and welfare and/or production of income must be met c. Except for payments required for the production of income on unsecured debts, including credit cards, are not allowed if the tax liability, including projected accruals, can be paid in full within 90 days 	<p>Examples of unsecured debts which may be necessary expenses include:</p> <p>EXAMPLE: Payments required for the production of income such as payments to suppliers or on lines of credit needed for business.</p> <p>EXAMPLE: Payment of debts incurred in order to pay a federal tax liability.</p>
Optional telephones and telephone services EXAMPLE: Pager, call waiting, caller identification, or long	Must meet the necessary expense test and pay within five years	Intentionally left blank

distance		
Student loans	<p>a. Repayment allowed if guaranteed by the federal government and only for the taxpayer's education</p> <p>b. The taxpayer must substantiate the payments are being made</p> <p>Taxpayers who have student loan debt, but are unable to make payments on the debt because they are suffering an economic hardship or have medical problems, should be advised to request a deferment or forbearance of the student loan payments. The installment agreement amount will be established without allowing for a student loan payment. Taxpayers must be advised that if they later make arrangements to pay the student loan, they can request the installment agreement be revised.</p>	<p>Taxpayers with student loan debt, who have not yet made arrangements to repay the loan, should be allowed 10 days to set up a payment plan for the student loan and provide verification so the loan payment can be allowed. Additional time may be allowed if a taxpayer has extenuating circumstances. Taxpayers must be advised that if they do not respond by the due date, the installment agreement amount will be established without allowing for a student loan payment. Taxpayers must also be advised that if they later make arrangements to pay the student loan, they can request the installment agreement be revised.</p> <p>REMINDER: If the taxpayer requested an IA for a specific amount and financial analysis supports a higher IA payment amount if the student loan payment is not allowed, the case is subject to</p>

		Independent Review before informing the taxpayer of the IA rejection. See IRM 5.19.1.5.5.8, <i>Installment Agreement Rejection Criteria</i>
Internet Service Provider/E-mail	Must meet the necessary expense test, generally for production of income	Intentionally left blank
Repayment of loans for payment of federal taxes	If the loan is secured by the taxpayer's assets when those assets are of reasonable value and are necessary to provide for the health and welfare of the family	Determine if this meets the necessary expense test

6. Delinquent State and Local Taxes - Payments for delinquent state and local (county or municipal) tax liabilities may be allowed in certain circumstances:

- When a taxpayer owes both delinquent federal taxes and delinquent state or local taxes, and does not have the ability to full pay the tax liability.
- When a taxpayer is cooperative and provides complete financial information.
- When a taxpayer advises IRS that he/she owes delinquent state or local taxes and provides verification of the state or local tax liability and agreement (if applicable).

Follow the procedures in this table to determine the allowable payment for delinquent state or local tax debts:

If ...	And ...	Then ...
The taxpayer does not have an existing agreement for payment of the delinquent state or local tax debts,	Provides a complete CIS and verification of state or local tax debts,	Follow procedures under Determining Allowable Payments for Delinquent State or Local Tax Debts below to establish the calculated percentage amount that will be listed as the allowable monthly payment for delinquent state or local taxes on the CIS.

<p>The taxpayer has an existing agreement for delinquent state or local tax debts, and that agreement was established after the earliest IRS date of assessment,</p>	<p>The payment amount on the state or local agreement is less than the calculated percentage amount,</p>	<p>The monthly amount due on the existing state or local agreement will be listed as the allowable delinquent state or local tax payment on the CIS.</p> <p>The payment to IRS will be increased by the amount allowed for the monthly state or local payment one month after the date the state or local liability is scheduled to be full paid.</p>
<p>The taxpayer has an existing agreement for delinquent state or local tax debts, which was established after the earliest IRS date of assessment,</p>	<p>The payment amount on the agreement, is more than the calculated percentage amount,</p>	<p>The amount listed as the delinquent state or local tax payment on the CIS will be the calculated percentage amount. Advise the taxpayer that he/she can use the amount IRS allows for Miscellaneous expenses under National Standards to pay the additional amount due for the delinquent state or local tax payment.</p> <p>The payment to IRS will be increased by the amount allowed for the monthly state or local payment one month after the date the state or local liability is scheduled to be full paid.</p>
<p>The taxpayer has an existing agreement for delinquent state or local tax debts, which was established prior to the earliest IRS date of assessment,</p>	<p>Allowing the amount on the existing state or local agreement will not result in the case being reported uncollectible,</p>	<p>Allow the existing state or local tax payment and increase the IRS payment one month after the date the state or local liability is scheduled to be fully paid.</p> <p>See explanation below if allowing the state payment will result in the account being reported</p>

		Currently Not Collectible.
--	--	----------------------------

Determining Allowable Payments for Delinquent State or Local Tax Debts

- Determine net disposable income on a Collection Information Statement (CIS), Form 433–A , *Collection Information Statement for Wage Earners and Self-Employed Individuals*, or Form 433–F , *Collection/Information Statement*. Do not include any amount that is being paid for outstanding state or local tax liabilities in the calculation. Net disposable income is the difference between gross income and allowable living expenses.
- Calculate the dollar amounts for IRS and state or local payments based on the total liability owed to each agency (including penalties and interest to date)
- Use the net disposable income and a percentage of IRS and state liabilities to total liability to calculate the payment amounts.

Examples of Determining Percentage and Allowable Payments for Delinquent State or Local Tax Debts

Example 1:

Type of Liability	Amount
IRS Liability	\$10,000.00
State or Local Liability	\$5,000.00
Total	\$15,000.00

Type of Liability	Percentage
IRS	$10,000.00/15,000.00 = .67$
State or Local	$5,000.00/15,000.00 = .33$

Type of Payment	IA Payment Amount
Taxpayer's net disposable income	\$400.00
IRS Payment (400 x .67)	\$268.00
State or Local Payment (400 x .33)	\$132.00

Example 2:

Type of Liability	Amount
IRS Liability	\$1,000.00
State or Local Liability	\$500.00
Total	\$1,500.00

Type of Liability	Percentage
IRS	$1,000.00/1,500.00 = .67$
State or Local	$500.00/1,500.00 = .33$

Type of Payment	Calculated IA Payment Amount	Actual IA Payment Amount
Taxpayer's net disposable income*	\$35.00	Intentionally Left Blank
IRS Payment ($35 \times .67$)	\$23.45	\$25.00
State or Local Payment ($35 \times .33$)	\$11.55	\$10.00

*If the Net disposable income is less than \$25, the account should be reported CNC.

If allowing even a minimal payment for delinquent state or local taxes will result in an IRS payment amount of less than \$25 and the account being reported CNC due to hardship:

And ...	Then ...
The taxpayer does not have an existing	A payment for delinquent state or local taxes will not be allowed. Advise the taxpayer that he/she

agreement for the delinquent state or local tax debts,	can use the amount IRS allows for Miscellaneous expenses under National Standards to pay the delinquent state or local tax payment.
The taxpayer has an existing agreement for the delinquent state or local tax debts, which was established after the earliest IRS date of assessment,	A payment for delinquent state or local taxes will not be allowed. Advise the taxpayer that he/she can use the amount IRS allows for Miscellaneous expenses under National Standards to pay the delinquent state or local tax payment.
The taxpayer has an existing agreement for delinquent state or local tax debts, which was established prior to the earliest IRS date of assessment,	<p>The amount allowed for state and local taxes on the CIS will be reduced to allow for an IRS Installment Agreement payment of \$25.00. Advise the taxpayer that he/she can use the amount IRS allows for Miscellaneous expenses under National Standards to pay the additional amount due for the delinquent state or local tax payment.</p> <p>The payment to IRS will be increased by the amount allowed for the monthly state or local payment one month after the date the state or local liability is scheduled to be fully paid.</p>

REMINDER: Calculations must be documented in the case history.

NOTE: Allowing payments for delinquent state or local taxes when establishing an installment agreement has no effect on lien or levy priorities. This guidance only impacts determinations of ability to pay. If the taxpayer refuses to establish an Installment Agreement or defaults on an agreement, IRS employees should follow existing procedures to pursue collection.

Minimum payments for delinquent state and local taxes are allowed for Installment Agreements using the six year rule. If the six year rule applies, taxpayers are required to provide financial information, but do not have to provide substantiation of reasonable expenses. If the taxpayer meets all other requirements for the six year rule, the amount claimed for state or local taxes may be allowed. Employees would not be required to obtain verification of the state payment or calculate an amount due based on the percentage basis as discussed above.

NOTE: If a state already has a Federal/State Memorandum of Understanding for establishing joint Federal and State agreements, follow the MOU guidelines.