



2015

IRSNationwide

TaxFORUM

Offers in Compromise: Advocating for Victims of Payroll Service Provider Failures



2015

IRSNationwide

TaxFORUM

Payroll Service Provider (PSP)

- A third party that is:
 - Administering payroll and employment taxes on behalf of the employer
 - Reporting, collecting, and depositing employment taxes with state and federal authorities



Examples of PSP Services

- Prepare the paychecks for the employees of the employer
- Prepare Forms 940 and 941 for the employer using the employer's EIN
- File Forms 940 and 941 for the employer, which are signed by the employer

2015

IRSNationwide

TaxFORUM



PSP Services (cont.)

- Make federal tax deposits (FTDs) and federal tax payments and submit this information for the taxes reported on the Forms 940 and 941
- Prepare Form W-3 and Forms W-2 for the employees of the employer using the employer's EIN

2015

IRSNationwide

TaxFORUM



Risks of Hiring A PSP

- Hiring a third party does not relieve the employer of employment tax filing, deposit and payment obligations
- When a third party goes out of business or misappropriates clients' funds, the employers remain liable for the unpaid taxes



2015

IRSNationwide

TaxFORUM



2015

IRSNationwide

TAXFORUM

Consequences of a PSP Failure

- Clients of a failed PSP may be required to pay the amount of employment taxes to the IRS with interest and penalties, even though they have already paid the employment taxes to the PSP to deposit with the IRS on their behalf.
- A business that can't recover from these setbacks may be forced to cease operations.



Collection Actions in Cases Involving PSPs

- If the third party fails to make the federal tax payments, the employer is liable for all taxes, penalties and interest due
- IRS may assess liability, file liens and issue levies against the employer
- Responsible persons of the employer may also be held personally liable for TFRP



2015

IRSNationwide

TaxFORUM



Personal Liability

- Under IRC 6672, the TFRP may be recommended against any person required to collect, account for, and pay over taxes held in trust (a responsible person) who willfully fails to perform any of these activities.

2015

IRSNationwide

TaxFORUM



2015

IRSNationwide

TaxFORUM

Initial IRS Contact with a Client of a PSP

- Review unauthorized changes of address;
- Discuss penalty abatement; and
- Discuss an offer in compromise with Exceptional Circumstances (Effective Tax Administration).



Penalty Abatement Factors

- Sufficient funds available
- Period of time unable to comply
- Timeliness of corrective actions
- Source of financial problems
- Documentation supports the facts



2015

IRSNationwide

TaxFORUM



Additional Factors for Meeting Reasonable Cause

- Knowledge of a pattern of noncompliance
- PSP fraud or deception

Note:

- Failure to file, to pay and to deposit penalties can be abated
- Interest cannot be removed



2015

IRSNationwide

TaxFORUM



2015

IRSNationwide

TaxFORUM

Offers in Compromise

- IRC sec. 7122
- Internal Revenue Service shall give special consideration to an offer-in-compromise from a taxpayer who has been the victim of fraud by a third party payroll tax preparer



Effective Tax Administration Offer in Compromise

- Viable collection alternative for victims of PSP fraud
- No doubt the tax is owed and
- No doubt that the full amount owed can be collected from the taxpayer

2015

IRSNationwide

TaxFORUM

ETA OIC (cont.)

1) Economic Hardship ETA

- Taxpayer may qualify for an ETA offer when their RCP is greater than the liability but collecting the full amount would result in economic hardship

2) Non-Economic Hardship ETA

Taxpayer presented facts that would support acceptance under the public policy/equity basis

Compromise would not undermine compliance with tax laws



2015

IRSNationwide

TaxFORUM



ETAs Involving Criminal or Fraudulent Acts of Third Parties

- Criminal or fraudulent acts of a third party are directly responsible for the tax liability
- Actions and Impact of Third Party Can Be Documented
- Taxpayer Misled to Believe Taxes Were Paid

2015

IRSNationwide

TaxFORUM



ETAs Involving Criminal or Fraudulent Acts of Third Parties, cont.

- Funds to Pay Taxes Were Available
- Taxpayer's Compliance Has Otherwise Been Good
- Taxpayer took reasonable precautions to prevent the criminal or fraudulent acts at issue

2015

IRSNationwide

TaxFORUM



ETAs Involving Criminal or Fraudulent Acts of Third Parties, cont.

- Financial Statement Analysis – Reasonable Collection Potential
- Determining an Acceptable Offer Amount
- Documentation and Verification
- Consider TFRP against PSP and officers

2015

IRSNationwide

TaxFORUM



Submitting an ETA OIC

- Form 656, *Offer in Compromise*, accompanied by:
 - Form 433-A (OIC)
 - Form 433-B (OIC)
- Examples

2015

IRSNationwide

TaxFORUM



Seek TAS Assistance if You:

- Are experiencing or are about to experience economic harm, significant cost, or irreparable injury,
- Have experienced a delay of more than 30 days to resolve your tax issue, or
- Have had no response or resolution to your problem by the date that was promised by the IRS.



2015

IRSNationwide

TaxFORUM



Contact TAS

- Call 877.777.4778
- File Form 911, *Request for Taxpayer Advocate Service Assistance (And Application for Taxpayer Assistance order)*



2015

IRSNationwide

TaxFORUM



Connect With TAS



IRSNationwide

TaxFORUM

- www.TaxpayerAdvocate.irs.gov
- www.youtube.com/tasnta
- www.facebook.com/YourVoiceAtIRS
- twitter.com/YourVoiceatIRS
- www.taxpayeradvocate.irs.gov/2014-Annual-Report