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|  | **AREAS OF PRACTICE****TAX CONTROVERSY****ENTITY CREATION****ESTATE PLANNING** |

# OIC OR BANKRUPTCY: seeking expert advice

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Owing the IRS lots of money is never a good thing. Even greater than the stress of such debt and the fear of what the IRS might do to you is the frustration of not knowing what, if any, options you have for dealing with the matter. The IRS scares most of us; this fear is multiplied exponentially if we get way behind in our tax obligations.

The IRS offers numerous options for dealing with delinquent tax liabilities, some or all of which may apply to any particular situation. If the delinquent liability is small – say $10,000, then it is fairly easy to obtain an installment agreement (assuming you can qualify). Most people can do this on their own online at IRS.gov. However, when the amount is substantial, often times the only option at the IRS level is for the person to apply for an offer in compromise. This option is not so simple…and usually much too complicated for the average layman. Understanding the offer in compromise (OIC) process is not the purpose of this article. But suffice it to say that in many situations, the real choice for the taxpayer will be between applying for an OIC or just filing chapter 7 or 13 bankruptcy. There are pros and cons to each strategy, and obviously rules and requirements for both. That is why it is usually beneficial to seek out a free meeting with a bankruptcy attorney as well as consulting with a tax attorney. While a tax attorney will be able to help you understand the requirements and procedures under the OIC program, he or she will probably only have a very general knowledge of the interplay between taxes and bankruptcy. A bankruptcy attorney will be able to verify what is and is not dischargeable in bankruptcy, what are the requirements under the “means testing”, and which chapter of the code, if any, is most advantageous for your particular situation. Only after consulting with both the bankruptcy attorney and the tax attorney can you truly understand the vagaries of each option and make an informed decision of which option ultimately will be the best for you and your family. So don’t delay. Get both sides of the stories. The quicker you understand your options, the sooner your fears will melt away.

KNOWING WHEN TO FILE A PROBATE

So you were informed that a family member has passed away. When that happens there is so much to think about and take care of…and process. But what about the property of the deceased. That has to be taken care of as well. And just because you are an adult child, brother, sister, parent, etc. does not mean you can just do what you want. There are laws that regulate such situations, and they can be quite daunting.

Most people have heard of the concept of probate. When someone dies their estate goes through probate- the creditors are paid and the remaining property is then distributed to the beneficiaries. Beyond this description, however, is a labyrinth of mystery. Cutting through that mystery is crucial if the beneficiaries of the estate want to get control of the assets without waiting for a seeming eternity.

The most fundamental issue to resolve is whether the estate needs to be probated at all. For instance, if the assets of the estate are in a revocable living trust, then there is no need for probate and the administration of the trust, a simpler and quicker process, will handle the matter. Some assets transfer to beneficiaries by operation of law. For instance, money held in a defined beneficiary account, or real property held in joint tenancy, do not need to be probated. Upon presentation of proof of death, such assets will be distributed directly to the beneficiaries without the necessity of court intervention. In California beginning in 2016, the Transfer on Death Deed will also be available to automatically transfer real estate upon the death of the title holder (subject to certain limitations).

Even if the assets in question are not held in such manner, and would therefore normally be subject to probate, California Probate Code Section 13100 allows a decedent’s estate with a value of $150,000 or less to avoid probate. In determining such value, certain assets are excluded under California Probate Code Section 13050. However, the summary adjudication or affidavit procedure may not be commenced until at least 40 days have elapsed since death.

Obviously, handling the transfer of the estate of a loved one is not easy. The emotional toll created by losing a valued member of the family is great. In the midst of such challenge, knowing what, when, where, and how to resolve the transfer of the estate of a loved one will help ease the transition.

# incorporating: lawyer or legalzoom?

So you have a new business idea…one that excites you and for which you have passion. You know that in order to properly run a business you need to structure your business in a certain way. You just don’t know how. But the last thing you want to do is spend what little startup money you have on some expensive lawyer just to get the company started.

With just a little online research, you will find an abundance of less expensive alternatives to help you with this crucial first legal step to create a business. The fees you will pay to utilize these alternatives will pale in comparison to the cost of going to a lawyer. Sites such as LegalZoom, Clerky, etc. often charge 1/10th of what lawyers cost. All good, right?

Have you ever heard the adage “you get what you pay for”? There is a reason that saying came into being. While these sites offer a much less expensive alternative to lawyers, they also do it on the cheap. You don’t get someone to just take care of it. You have to do it. You have to know how to answer the questions…and you are responsible for knowing things like what entity choice is the best choice for your business and what parts of the incorporating process are important to your particular situation. These issues are or can be very confusing with many ramifications now and in the long term depending on where you want to go with your business. There is a reason why attorneys charge a lot to handle this process…they must understand the business and tax law in relation to YOUR particular situation…at the time you incorporate and with an eye to the future you want to actualize. So scrimping on costs at this stage can be very costly. If you do go with one of the cheaper options, then you may want to seriously consider finding an attorney to review what you have done and whether what you have done is consistent with where you want to go…before you start going there.

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