

Arizona Tax Essentials: Are Taxes Currently Not Collectible?

By Lawrence 'D' Pew, [AZ Tax Resolution Attorney](#)

This may come as a surprise, but even the IRS admits that taxes are uncollectible from taxpayers in certain situations.

For some individuals, the IRS will permanently cease attempts to collect taxes. For others, the IRS will temporarily suspend tax collection, but will resume its efforts when circumstances change. The official description is *currently not collectible* (CNC), which means the individual owes the federal tax, but the IRS cannot collect it under existing conditions. When any taxpayer has an unpaid tax liability, the first question to ask is whether the tax is even collectible by the IRS.

What Statutes of Limitation Will Stop the IRS?

There are two important statutes of limitation that restrict IRS action against a taxpayer. The first time limit is on IRS collections and levies, while the second time limit is on IRS assessments. Here is a description of both limitations periods:

- ***10-Year Limitation on Collection By Levy or Court Proceeding.***

There is a 10-year limit on tax collection by levy or the initiation of court proceedings. IRC § 6502(a)(1). The clock starts running on the date of assessment, which is when the liability is assessed on the IRS form, at the IRS service center, as signed by the IRS agent. (For example, if 2008 taxes were filed in 2011 and the IRS assessed the tax in 2012, then the 10-year period for collection begins in 2012 and expires in 2022.)

Also, penalties and interest on the assessed tax must be collected during the same 10-year period. Be careful when calculating the 10-year period, though. Many legal proceedings suspend the limitations period, such as a pending offer in compromise, a bankruptcy, and certain court proceedings.

- ***General 3-Year Limitation on Tax Assessments.***

Under the general rule, the IRS has *three years* to assess a tax. The clock starts running with the filing of the taxpayer's return. If the taxpayer made substantial omissions to the return, then the period may be longer.

The IRS has *six years* to assess a tax when the taxpayer omitted reporting additional gross income in excess of 25% of stated gross income on the tax return. And no statute of limitations prevents assessment of tax when the taxpayer filed a deliberately false or fraudulent tax return. IRC § 6501.

Will the IRS Agree to Suspended Collections?

When a taxpayer is under serious financial hardship (perhaps on disability or entirely dependent upon Social Security income), the government may suspend tax collection and allow the 10-year statute of limitations period to simply expire. This program is known as *suspended collections*, or the *hardship plan*, and is designed for those who are poor and struggling to cover basic necessities.

To qualify for the suspended collections program, the taxpayer must prove substantial economic hardship – that is, living paycheck-to-paycheck (assuming there is a paycheck). When paying the tax debt would force the person to go without basic needs (food, housing, transportation, and medical expenses), the IRS will consider halting collections and going on stand-by as the 10-year clock runs out. Once the limitations period has expired, the taxpayer is clear of the tax debt.

Are Taxes Currently Not Collectible Because of Hardship?

Another possibility for tax relief is in qualifying for *currently not collectible* (CNC) status. When a taxpayer has few assets, minimal income, and is barely covering basic living expenses – and paying the tax would cause substantial hardship – then the IRS may *temporarily* suspend collections. The 10-year statute of limitations period continues to run, but an improvement in the taxpayer's financial situation will trigger the resumption of collections. If the limitations period expires, then the taxpayer will owe no tax.

To maintain CNC status, the taxpayer's finances are monitored by the government for any positive change that would allow the IRS to kick-start collections. The CNC taxpayer will file annual financial statements with the IRS for comparison with tax returns. Importantly, even with the taxpayer on CNC status, interest continues to accrue on back taxes.

What Tax Relief Does CNC Status Provide?

Currently not collectible status gives twofold relief to the taxpayer:

- *First.* There is immediate debt relief because tax collection is “temporarily” suspended. (Remember that the 10-year statute of limitations is running, so temporary can become permanent if enough time passes.) Once determined to be CNC, the IRS stops collections, but interest on the tax continues to accrue. Should taxpayer earnings or assets notably increase because circumstances have improved, then CNC status is removed, IRS collections are reinstated, and the taxpayer begins paying the tax debt.
- *Second.* For many CNC taxpayers, the tax liability is reduced or eliminated by the passage of time. This is because CNC status suspends IRS collections, but does not suspend the 10-year statute of limitations period from running out on the IRS.

What Circumstances May Result in Taxpayer CNC Status?

The CNC status is a last resort tax relief option, so the taxpayer does not qualify for an *offer in compromise* or *installment agreement*. This means the taxpayer's present financial state is

pretty dire. Having said that, many circumstances can trigger suspension of tax collections because they are currently not collectible, including the following:

- Collecting the tax would cause undue hardship for the taxpayer who would be left unable to pay for basic living expenses.
- Partial expiration of the limitations period for assessment under certain circumstances.
- 10-year statutory period has expired for collections or court filing to reduce a tax claim to judgment.
- The taxpayer is deceased and the IRS cannot collect from the decedent's estate.
- The IRS cannot locate the taxpayer or taxpayer assets.
- Although the IRS has a taxpayer address, it cannot enforce the tax because it is unable to contact the taxpayer.
- The taxpayer is a service member deployed in a combat zone.
- Although able to pay, the taxpayer resides in a foreign country rendering IRS unable to collect.
- The taxpayer organization was a corporation, LLP, LLC, or exempt operation that is now inactive and defunct.
- The taxpayer organization was liquidated in bankruptcy.
- Although the taxpayer organization is still operating and in business, it is unable to pay the back taxes owed.
- The IRS is unable to locate the single member taxpayer under an LLC employer identification number (EIN) or unable to locate taxpayer assets.

How Do Taxpayers Prove Financial Hardship to the IRS?

If a taxpayer is unable to pay the tax debt and collection would cause real financial hardship, then the case may be designated as currently not collectible.

The taxpayer has the burden of proving financial hardship and files a *collection information statement* with the IRS (Form 433-A). To be considered for CNC status, there can be few assets available to the IRS to levy, seize and liquidate. Here are some of the asset disclosures required:

- ***Accounts and Lines of Credit.*** All bank and credit union accounts, CDs, IRAs, 401(k)s, Keogh plans, SEPs, profit sharing plans, stocks and mutual funds.
- ***Number of Dependents.*** Dependents claimed last year and to be claimed next year.
- ***Real Estate.*** All realty interests including property being purchased, real estate already owned, time shares, vacation property, primary residence, and vacant land.
- ***All Other Assets.*** All other assets including vehicles, boats, whole life insurance policies (cash value), royalties, and personal property.
- ***Credit Card Accounts.*** Visa, MasterCard, American Express, and store accounts. Describe the type of card, the credit limit on each account, the balance that is owed (even if zero), and the minimum monthly payment required.

- **Wage Information.** Current employers of both spouses, pay periods, gross pay, tax withholdings, length of employment, and last year's reported taxable income.
- **All Other Income.** Any other source of income, including spousal support and child support. Include income from net self-employment, net rent, unemployment, pensions, interest, dividends, and Social Security.
- **Monthly Necessary Living Expenses.** The taxpayer details all monthly expenses: food, housekeeping supplies, clothing, personal care products and services, housing, utilities, trash removal, telephone and communications, real estate taxes, child or dependent care, estimated tax payments, term life insurance, employer required retirement contributions, voluntary retirement contributions, court-ordered payments (such as child or spousal support), transportation costs, medical expenses and health insurance. Be aware that, even if the taxpayer's monthly expenses are legitimate, the IRS holds to the national average cost for basic needs, which may be significantly less than actual costs.

Completing the asset disclosures required for CNC consideration is a complex and tedious process, but to prove hardship the disclosures must be complete and accurate. By providing the IRS with a complete disclosure of assets and income, the taxpayer hands over a list of everything that the government could levy and seize. The purpose of CNC status is to get relief from the incessant collection efforts of the IRS when the taxpayer does not have the funds available to pay the tax debt. If there *are* assets to liquidate, as evidenced by Form 433-A disclosures, then the IRS will do so and CNC status will not be forthcoming.

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Lawrence 'D' Pew is an experienced tax, bankruptcy, and transactional attorney, and founder of the Pew Law Center, PLLC, a leading Arizona tax and bankruptcy law firm focused exclusively on debt relief. With offices in Mesa, the law firm serves Arizona residents in the greater Phoenix area, including Scottsdale, Mesa, Tempe, Gilbert and Chandler. As a client-oriented law firm with a mission to always exceed client expectations, the Pew Law Center has helped over 2,000 people file for bankruptcy and eliminate over \$100 Million in debt. Need more information? Call the Pew Law Center at (480) 745-1770.

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