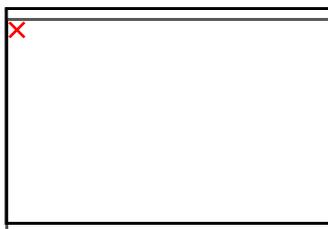


Actor Wesley Snipes Shows Us How Not To Settle an IRS Debt: The Importance of a Tax Attorney

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Wesley Snipes Tax Case

Normally, U.S. Tax Court memorandum decisions do not garner media attention. Typically, they involve issues of substantive or procedural tax disputes - not exactly drop-what-you're-doing subject matter or material. However, last month, the Court was hit with a dose of celebrity, and in turn, some publicity. Indeed, movie fans of the late-1990s/early-2000s vampire hunter trilogy,

Blade, likely found themselves confounded when the actor behind the title character and protagonist re-emerged into the headlines, but not for cinematic achievement or accomplishment. Instead, Wesley Snipes made news for losing his Tax Court petition.

Specifically, Mr. Snipes had racked up quite a tax debt with the IRS - to the tune of \$23.5 million. Unable to pay the full amount, he submitted an offer in compromise (OIC) to the IRS, which was rejected and led him to Tax Court. For reference, an offer in compromise is a request submitted to the IRS where a taxpayer desires to settle a tax liability for a lesser amount than is owed. Mr. Snipes submitted his OIC as a doubt as to collectability submission. In other words, he did not challenge the validity of his tax liability, but contended that the IRS would never fully collect the full amount, making it in their best interest to settle for a lesser amount. Indeed, his contention was clearly reflected on his OIC submission wherein he sought to settle his tax debt for \$842,061, or less than 4% of his underlying tax liability.

Given the staggering discrepancy between Mr. Snipes' attempted OIC and his tax debt, it would seem as though the IRS' rejection was a mere formality and that he should stop watching late night tax relief infomercials. However, the IRS' rejection was not based on such a discrepancy. Instead, the IRS bases its OIC decisions on the taxpayer's quantifiable financial disposition, or what a taxpayer can afford to pay.

Why OICs Are Rejected

Indeed, a taxpayer's ability to pay will focus on their income/assets versus their expenses. While there are a variety of reasons that the IRS rejects OICs, the primary ones are for understating the value of assets/income and overstating expenses. For Mr. Snipes, he was caught attempting to move assets out of his name before and during his initial appeal, and he apparently didn't do a particularly good job of it. The IRS attributed those assets to him as part of his overall net worth, and therefore concluded he was able to pay substantially more than he offered via his OIC. The IRS scrutinizes both the assets/income and expenses categories - especially if the expenses far exceed the taxpayer's income or their assets appear to be substantially understated or they are out of line with income and lifestyle (see Wesley Snipes example).

In addition, the IRS will reject an OIC for failure to comply with specific procedures and guidelines or for a lack of cooperation with such procedures and guidelines. While the IRS will generally permit you to re-submit an OIC if it is rejected on procedural

grounds, this will only delay and complicate the process, whereas a lack of cooperation can lead to an outright rejection. When taxpayers are under IRS levy or garnishment, or are saddled or threaten with a federal tax lien, any delay or complication can impose unnecessary hardship and disruption.

Accordingly, it is essential that the procedures and guidelines are followed precisely. For example, both Form 656 (Offer in Compromise) and Form 433-A or -B (Collection Information for Individuals and Businesses, respectively) must be fully completed and submitted. Taxpayers will oftentimes neglect to submit one of them due to the redundancy of information requested on these forms. In addition, taxpayers must fully complete the forms - especially the Form 433, which amounts to a full and exhaustive financial disclosure form. If incomplete, inaccurate or insufficient, the IRS will either reject the OIC or request further substantiation - which will lead to delays and complications. Taxpayers must also submit both the application fee and the initial offer payment. Taxpayers confuse the application fee as being the same as the initial offer payment, and vice versa. They are separate and they are both required.

How an Experienced Tax Attorney Can Help

An experienced tax attorney guides clients through this process so that an offer has the highest probability of being accepted and the debt resolved. Specifically, the information contained on Form 433 will dominate the IRS' OIC analysis. Form 433 can be confusing and its rules/instructions can be complicated and deficient. In addition, different taxpayers have different circumstances which can necessitate experienced and professional assistance.

Some questions to consider include:

- What if the liable taxpayer is married to an innocent spouse?
- How are joint and separate assets as well as shared expenses reported?
- How are fluctuating expenses calculated?
- Is an anticipated inheritance reportable?
- Should trust distributions be reported?
- How should you report the value of stocks?
- What about the value of life insurance?

Taxpayers do not want to get caught misstating the value of assets/income, or the amount of expenses - such figures are subject to substantiation, at the IRS' request. A misstatement can cause an OIC to be rejected, or (maybe worse) can put a taxpayer in a Wesley Snipes situation where they are deemed more wealthy than they, in fact, are. Accordingly, there are strategies for when and how to complete Form 433 that an experienced tax attorney can provide.

In addition, experienced tax attorneys can provide advice relating to penalty abatement. In limited circumstances, the IRS will agree to abate accrued penalties (and in very limited circumstances, grant interest waivers). This can drastically lower a taxpayer's total balance due, and potentially make an OIC more palatable for the IRS to accept.

Not every taxpayer is a good candidate for an OIC. An experienced tax attorney will analyze the taxpayer's situation, discuss alternatives, and determine the best strategy tailored to client needs. Indeed, for some taxpayers, an installment agreement may make more sense or have a greater likelihood for approval. In addition, currently not

collectible status may assist certain taxpayers as it will “pause” IRS collection activity for a limited period of time. However, before making any submissions, it is advisable to seek professional advice. In the event an OIC has already been submitted, and rejected, taxpayers have appeal rights at their disposal (see Wesley Snipes example) where a tax attorney can provide assistance.

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