

# How does the IRS value retirement accounts in an offer in compromise?

I recently received a email question inquiring about how the IRS values retirement assets in an offer in compromise.

If you do not have the right to access the retirement money, then neither does the IRS, and it is not included in the value of a compromise. In other words, the IRS steps into your shoes. This rule is incorporated into Internal Revenue Manual Section 5.11.6.2 (a levy on a retirement plan only reaches the taxpayer's present rights) and recognized in law (U.S. v. General Motors, 929 F.2d 249 (6th Circuit 1991)). This applies to both a collection case and the value of an offer in compromise.

With that background, the handling of retirement plans in an offer in compromise is outlined in Section 5.8.5.3.8 of the Internal Revenue Manual, summarized as follows:

**1. Cannot liquidate, cannot borrow.** If the account is tied to your employment, and you cannot liquidate the account or borrow against it until separation from employment (or you are not vested), then the account will not be included in the value of a compromise. If you cannot get to it, neither can the IRS. However, if you will be retiring before the statute of limitations on collection expires, the IRS has discretion to include the account value in the compromise as part of the future collection potential.

Here is an good example from the Internal Revenue Manual 5.11.6.2(7):

The taxpayer has money in a plan. The terms of the plan do not allow for any lump sum withdrawal. The plan provides a right in the future to receive monthly payments, but the taxpayer has not paid into it long enough yet to qualify for any future payments. A notice of levy attaches nothing, because the taxpayer has no present property rights

**2. Cannot liquidate, can borrow.** If you cannot liquidate the account, but can borrow against it, the Internal Revenue Manual provides that the amount available as a loan is included in the value of the compromise. However, in situations where borrowing is permitted but not liquidation, the IRS would not be able to immediately seize the account and get to it (the IRS cannot "borrow" for you, and has no rights to liquidation since you do not). Yet the government includes ability to borrow in the value of the compromise. This appears to skewer the compromise collection potential in the government's favor. In "cannot liquidate, can borrow" cases, this rule on borrowing should be respectfully disputed.

**3. Can liquidate.** If there are no restrictions on access to the account and it can be liquidated, then the account value will be included in the compromise, less expenses of liquidation (taxes and penalties).