

## **IRS Voluntary Disclosure (Offshore Income)**

**The California Tax Lawyer (2009 Summer Edition) published my article, Update on (IRS) Offshore Income/Account Enforcement, copy below.**

The IRS 6-month deadline (thru September 23, 2009) to report offshore accounts and income will expire September 23, 2009 (unless extended).

For U.S. Taxpayers considering making a voluntary disclosure prior to September 23, 2009, they need to evaluate the following risks:

1. The voluntary disclosure initially reviewed by the IRS Criminal Processing Unit and if not accepted, may be referred for criminal prosecution.
2. Taxpayers may waive their 5<sup>th</sup> Amendment right against self-incrimination since the IRS has requested Taxpayer information including name, Social Security Number, assets involved (listings of foreign bank accounts).
3. By making a voluntary disclosure, Taxpayer loses the ability to file all amended income tax/FBAR returns (or originals) in a "quiet compliance" tax filing

Please see enclosed:

### ***Update on Offshore Income / Account Enforcement***

On March 23, 2009, the IRS issued a series of three memoranda to update voluntary disclosure policies, primarily in connection with offshore transactions. According to IRS Commissioner Douglas H. Shulman, "The goal is to have a predictable set of outcomes to encourage people to come forward to take advantage of (IRS) voluntary disclosure practices while they still can." The Commissioner set a 6-month deadline for disclosures under the forms of the guidance (i.e., thru September 2009) at which time the program will be re-evaluated.

Under the IRS new policy, the following tax rules apply:

- Payment of back taxes for up to the last 6 years (with interest) on the newly disclosed assets;
- Either a 20% accuracy- related penalty under IRC §6662, or a 25% delinquency penalty under IRC §6651 for each Tax Year at issue;
- During the past 6 years, a 20% penalty on the total balance of all the Taxpayer's foreign bank accounts or assets during the year (among the past 6 years) in which the account had their highest aggregate value.

The IRS Commissioner stated:

- The IRS will not pursue charges of criminal tax evasion against Taxpayers who voluntarily disclose their offshore assets under this new policy.
- The IRS will not pursue other penalties against participating Taxpayers, such as IRC §6663 fraud penalties (75% of the unpaid tax) or the statutory penalty for willful failure to file a TD F 90-22.1 Report of Foreign Bank and Financial Accounts (FBAR) (the greater of \$100,000 or 50% of the foreign account balance) that apply annually to undisclosed accounts (and assets) during the relevant Tax Years.
- The IRS advises field personnel that they should give priority treatment to offshore transactions and entities during examinations, with a special emphasis on detecting unreported income.

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