Disclosing An Offshore Account in 2011

Facts You Can Bank On

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The IRS has launched a second round of the Offshore Voluntary Disclosure Initiative with a fast-approaching deadline of August 31, 2011. In 2009, the IRS announced a similar program geared to attract taxpayers with unreported foreign accounts. The program allowed taxpayers to report previously undisclosed income from foreign accounts to the IRS, in exchange for a promise that the IRS would not refer the case to its Criminal Investigation Division where the taxpayer would be at risk for prosecution of a variety of tax crimes including fraud, tax evasion and money laundering.

Over 15,000 taxpayers participated in the original program, causing the IRS to launch a second initiative with a slightly higher penalty structure. Although the penalties are steep, the result of participating in the program is a lower overall financial penalty payable to the United States Treasury.

The IRS has a long-standing traditional voluntary disclosure program for taxpayers with unreported income. So long as the income was derived from a legal source, and the taxpayer is not presently being audited by the IRS, or have a reason to believe he is under IRS scrutiny, the taxpayer can participate in the program.

The August 31, 2011 deadline requires taxpayers to act now. Unlike prior amnesty programs, the current program requires not only the formal disclosure by August 31, 2011, but also a plethora of other financial information including original returns, amended returns, Forms TD F 90.22-1 (Report of Foreign Bank and Financial Accounts), and financial data concerning the offshore account for the years included in the disclosure (generally 2003 through 2010, inclusive). If the account has held more than $1 million, additional reports and data are required.

In addition to paying the tax and interest due, taxpayers are penalized with a one-time 25 percent penalty on the amount in the year with the highest aggregate balance as well as a 20 percent accuracy-related penalty which applies to all years included in the disclosure. Under certain circumstances, some taxpayers qualify for reduced penalties.

If the taxpayer cannot pay the full liability, then other documents will be required to support the taxpayer's proposed payment plan. Therefore, it is not too soon to begin the process to ensure a proper application can be made by August 31st.

The IRS is intensifying its efforts in the foreign enforcement area. To avoid criminal prosecution, taxpayers with offshore accounts should consider reporting their accounts through the voluntary disclosure process before discovery by the IRS.

Although the penalties may be significant depending on the amount of undisclosed income and the size of the offshore account, the taxpayer can sleep well, with the knowledge that he is safe from criminal prosecution. That, you can bank on.