

**IRS ANNOUNCES NEW VOLUNTARY DISCLOSURE DEAL FOR
OFFSHORE ACCOUNT HOLDERS – SEPTEMBER 23, 2009**

DEADLINE

Richard G. Convicer, Esq.

Eric L. Green, Esq.

On March 23, 2009 the Internal Revenue Service announced a new offer to taxpayers holding offshore accounts.

In an effort to bring those taxpayers maintaining assets offshore back into the tax system, the IRS will now guarantee taxpayers who come forward voluntarily that the IRS will neither bring criminal charges nor seek the 75% fraud penalty.

The program is currently set to expire in six months, or on September 23, 2009, at which time the IRS will reevaluate its effectiveness.

The Deal

In order to take advantage of the IRS offer, taxpayers will need to do all of the following:

- Pay 6 years of back taxes on the newly disclosed assets;
- Pay the interest due on the back taxes;
- Pay either a 20% accuracy related penalty or a 25% delinquency penalty for each tax year at issue;
- Pay a 20% penalty on the total balance in the taxpayer's foreign bank accounts for the year the accounts held their highest aggregate value.

Though the taxpayers who come forward will pay taxes, interest, and substantial penalties, they will not face either criminal prosecution or the 75% fraud penalty. In addition, they will not be subjected to the civil penalty for failing to file Form TD F 90-22.1 to report their interest in a foreign bank account. The voluntary disclosure allows taxpayers to put the issue behind them and give them certainty as to their tax liability.

Voluntary Disclosure

This offer is only available to taxpayers who make a voluntary, timely disclosure. Under the Internal Revenue Manual (“IRM”) § 9.5.11.9.3, a voluntary disclosure occurs when the taxpayer’s communication to the IRS is “truthful, timely, complete, and when:

- A taxpayer shows a willingness to cooperate (and does in fact cooperate) with the IRS in determining his/her correct tax liability.
- The taxpayer makes good faith arrangements with the IRS to pay in full, the tax, interest, and any penalties determined by the IRS to be applicable.”

In addition, IRM § 9.5.11.9.4 states that a voluntary disclosure is timely if it is received before:

- The IRS has initiated a civil examination or criminal investigation of the taxpayer, or has notified the taxpayer that it intends to commence such an examination or investigation.
- The IRS has received information from a third party (e.g., informant, other governmental agency, or the media) alerting the IRS to the specific taxpayer’s noncompliance.

- The IRS has initiated a civil examination or criminal investigation which is directly related to the specific liability of the taxpayer.
- The IRS has acquired information directly related to the specific liability of the taxpayer from a criminal enforcement action (e.g., search warrant, grand jury subpoena).

The taxpayer's request will initially be examined by Criminal Investigation ("CI") to determine if the taxpayer is eligible to participate in the program. If CI determines that the taxpayer has made a timely disclosure under IRM § 9.5.11.9.4 above, the request will be sent to the Philadelphia Offshore Identification Unit for processing.

Priority Case Development

The new voluntary compliance initiative comes when the IRS is pushing its personnel to make finding unreported income, including hidden offshore accounts, a priority. As discussed in an accompanying IRS Memorandum, investigating "abusive offshore transactions designed to defeat our tax system" is the highest priority, and IRS examiners are instructed to use all the IRS tools available, including third party contacts, administrative summonses, and in person interviews of taxpayers to develop cases and, where applicable, make determinations regarding potential penalties.

This initiative is similar to the one implemented by the IRS in 2003 where the Service gained information about thousands of taxpayers using foreign credit cards to shelter assets offshore and, recognizing the daunting task of allocating sufficient

resources to audit this mother lode of potential unpaid taxes, offered taxpayers an opportunity to file delinquent or amended returns to report their correct liability.

Conclusion

Taxpayers who have unreported offshore accounts should avail themselves of this new IRS voluntary disclosure program, particularly in light of the IRS's priority initiative to locate and pursue unreported income. Failure to take advantage of this program will leave such taxpayers open to both the 75% fraud penalty and criminal prosecution. *Remember, September 23, 2009 is the deadline!*

About the Authors

Richard G. Convicer of Convicer & Percy, LLP in Glastonbury, Connecticut, specializes in corporate and individual tax planning. Attorney Convicer represents individuals and businesses in criminal and civil tax proceedings before the Internal Revenue Service and the Connecticut Department of Revenue Services. He has been named in the Best Lawyers in America and is a Fellow of the American College of Trust and Estate Counsel. Before entering private practice, Mr. Convicer served as trial attorney in the Office of District Counsel, Internal Revenue Service in Hartford, Connecticut. Attorney Convicer is an honors graduate of Boston College Law School and received his Master of Laws degree in Taxation from New York University School of Law. Attorney Convicer can be reached at rconvicer@convicerpercy.com.

Eric L. Green is Of Counsel to Convicer & Percy, LLP in Glastonbury, Connecticut, where he specializes in representing individuals and businesses in criminal and civil tax proceedings before the Internal Revenue Service and the Connecticut Department of Revenue Services, business tax planning and estate planning. He is currently adjunct faculty at the *University of Connecticut School of Law*, serves as the Vice Chair of the Closely Held Business Tax Committee of the American Bar Association, and has been quoted in several national publications. Attorney Green is an honors graduate of New England School of Law and received his Master of Laws degree

in Taxation from Boston University School of Law. Attorney Green can be reached at egreen@convicerpercy.com.