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IRS busts Swiss bank secrecy wide open

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Taxpayers should beware of penalties for not disclosing foreign account information.

The Internal Revenue Service requires taxpayers to disclose foreign accounts on tax returns – even if the foreign account generates no income. If the collective amount in any foreign accounts exceeds \$10,000, a U.S. taxpayer must also file a Form TD-F 90-22.1 FBAR (Report of Foreign Bank and Financial Accounts) disclosing information on the foreign account.

Many in North Texas have no knowledge of these requirements – or have received erroneous advice from offshore bankers or others that these requirements do not apply to them.

The IRS for years has wanted to lift the veil of Swiss banking secrecy to determine if U.S. taxpayers with offshore accounts are IRS compliant. To entice disclosure, the IRS allowed, until Oct. 15, 2009, U.S. taxpayers to voluntarily disclose previously undisclosed foreign accounts in exchange for no criminal prosecution and reduced civil taxes and penalties. Such penalties can equal 25% of the amount in an offshore account. Between 7,500 and 10,000 taxpayers participated in this program, with the size of the accounts ranging from just over \$10,000 to more than \$100 million. The program was a windfall for taxpayers who engaged in questionable tax planning, but a hardship on taxpayers who never knew of the IRS requirements for offshore accounts and transactions.

Financial services firm UBS (through the Swiss government) recently agreed to provide the IRS with an additional 4,450 names of its U.S. customers. There are still thousands of letters being processed by UBS and in the queue waiting to be mailed. Many in North Texas are on the list and continue to receive letters from UBS and calls from other offshore banks saying that their identities are going to be turned over to the IRS. Providing these names is a tremendous blow to offshore banking secrecy as it relates to IRS tax matters for Americans.

So what does a North Texan – or any taxpayer subject to U.S. tax reporting requirements, for that matter – do when he or she learns that their offshore financial institution is going to turn over their name to the IRS? Initially, the taxpayer must determine if he is 100% tax compliant. If he is, that is good news, except for the fact that the taxpayer should still expect the IRS to reach out and touch him one way or another.

The IRS may be so kind as to merely send out a letter. On the other hand, the IRS may send out live agents to interview the taxpayer. These agents can be either the garden variety, run-of-the-mill civil agents or the much more interesting criminal investigation type.

Obviously, if a taxpayer is less than 100% tax compliant, discussions with the IRS may turn into either a confession or a cornucopia of lies designed to insulate the taxpayer from past poor choices regarding tax compliance. For these taxpayers, silence can be golden. When any taxpayer talks to the IRS, a concern arises if the IRS misinterprets something and later decides it was an intentionally misleading statement. For these reasons, most taxpayers faced with live IRS agents – civil or criminal – routinely contact a tax attorney to scout out the lay of the land prior to any interview. Once the IRS is on the scene, the do-it-yourself approach should no longer be an option.

Alternative methods exist for taxpayers with undisclosed offshore accounts that must be considered with great care in light of the potential consequences. In the post-Oct. 15, 2009, world, the IRS has vowed to throw the book at nondisclosing foreign account holders, promising criminal investigations and much harsher civil penalties. Whether the IRS moves in the direction of tough enforcement against offshore tax evaders or turns its efforts into a modern-day witch hunt for taxpayers who merely stubbed their toes remains to be seen.

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