

Internal Revenue Manual  
Copyright (c) 2009 by RIA

Part 9 - Criminal Investigation  
Chapter 9.5 - The Investigative Process  
9.5.11 - Other Investigations  
9.5.11.9 - Voluntary Disclosure Practice

9.5.11.9 - Voluntary Disclosure Practice (09-09-2004)

(1) It is currently the practice of the IRS that a voluntary disclosure will be considered along with all other factors in the investigation in determining whether criminal prosecution will be recommended. This voluntary disclosure practice creates no substantive or procedural rights for taxpayers as it is simply a matter of internal IRS practice, provided solely for guidance to IRS personnel. Taxpayers cannot rely on the fact that other similarly situated taxpayers may not have been recommended for criminal prosecution.

(2) A voluntary disclosure will not automatically guarantee immunity from prosecution; however, a voluntary disclosure may result in prosecution not being recommended. This practice does not apply to taxpayers with **illegal source income**.

(3) A voluntary disclosure occurs when the communication is truthful, timely, complete, and when:

(a.) A taxpayer shows a willingness to cooperate (and does in fact cooperate) with the IRS in determining his/her correct tax liability.

(b.) 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.

(4) A disclosure is timely if it is received before:

(a.) 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.

(b.) 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.

(c.) The IRS has initiated a civil examination or criminal investigation which is directly related to the specific liability of the taxpayer.

(d.) 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).

(5) Special agents are encouraged to consult their Criminal Tax (CT) Counsel attorney on voluntary disclosure issues.

(6) Examples of voluntary disclosures include:

(a.) A letter from an attorney which encloses amended returns from a client which are complete and accurate (reporting legal source income omitted from the original returns), which offers to pay the tax, interest, and any penalties determined by the IRS to be applicable in full and which meets the timeliness standard set forth above. This is a voluntary disclosure because all of the elements set forth in (3) above, have been met.

(b.) A disclosure made by a taxpayer of omitted income facilitated through a barter exchange after the IRS has announced that it has begun a civil compliance project

targeting barter exchanges but before it has commenced an examination or investigation of the taxpayer or notified the taxpayer of its intention to do so. In addition, the taxpayer files complete and accurate amended returns and makes arrangements with the IRS to pay in full, the tax, interest, and any penalties determined by the IRS to be applicable. This is a voluntary disclosure because the civil compliance project involving barter exchanges does not yet directly relate to the specific liability of the taxpayer and because all of the elements set forth in (3), above have been met.

(c.) A disclosure made by a taxpayer of omitted income facilitated through a widely promoted scheme that is the subject of an IRS civil compliance project. Although the IRS already obtained information which might lead to an examination of the taxpayer, it not yet commenced any such examination or investigation or notified the taxpayer of its intent to do so. In addition, the taxpayer files complete and accurate returns and makes arrangements with the IRS to pay in full, the tax, interest, and any penalties determined by the IRS to be applicable. This is a voluntary disclosure because the civil compliance project involving the scheme does not yet directly relate to the specific liability of the taxpayer and because all of the elements set forth in (3), above have been met.

(d.) A disclosure made by an individual who has not filed tax returns after the individual has received a notice stating that the IRS has no record of receiving a return for a particular year and inquiring into whether the taxpayer filed a return for that year. The individual files complete and accurate returns and makes arrangements with the IRS to pay, in full, the tax, interest, and any penalties determined by the IRS to be applicable. This is a voluntary disclosure because the IRS has not yet commenced an examination or investigation of the taxpayer or notified the taxpayer of its intent to do so and because all of the elements set forth in (3), above have been met.

(7) Examples of what are not voluntary disclosures include:

(a.) A letter from an attorney stating his/her client, who wishes to remain anonymous, wants to resolve his/her tax liability. This is not a voluntary disclosure until the identity of the taxpayer is disclosed and all of the elements of (3) above have been met.

(b.) A disclosure made by a taxpayer who is under grand jury investigation. This is not a voluntary disclosure because the taxpayer is already under criminal investigation. The conclusion would be the same whether or not the taxpayer knew of the grand jury investigation.

(c.) A disclosure made by a taxpayer, who is not currently under examination or investigation, of omitted gross receipts from a partnership, whose partner is already under investigation for omitted income that was skimmed from the partnership. This is not a voluntary disclosure because the IRS has already initiated an investigation which is directly related to the specific liability of this taxpayer. The conclusion would be the same whether or not the taxpayer knew of the ongoing investigation.

(d.) A disclosure made by a taxpayer, who is not currently under examination or investigation, of omitted constructive dividends received from a corporation which is currently under examination. This is not a voluntary disclosure because the IRS has already initiated an examination which is directly related to the specific liability of this taxpayer. The conclusion would be the same whether or not the taxpayer knew of the ongoing examination.

(e.) A disclosure made by a taxpayer after an employee has contacted the IRS regarding the taxpayer's double set of books. This is not a voluntary disclosure even if no

examination or investigation has commenced because the IRS has already been informed by the third party of the specific taxpayer's noncompliance. The conclusion would be the same whether or not the taxpayer knew of the informant 's contact with the IRS.

(8) Pattern Letter 2527(P), is a letter that may be used to respond to a situation where a taxpayer's representative forwards a letter with payment from an anonymous taxpayer. See Document Manager for Pattern Letter 2527(P).

END OF DOCUMENT