

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

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).

9.5.11.9.1 (09-09-2004)

Voluntary Disclosure Protocols

1. All voluntary disclosures must meet the requirements contained in subsection 9.5.11.9 above. The voluntary disclosure practice does not specify any particular format for voluntary disclosure communications so long as these requirements are met. The taxpayer or their representative may provide information either verbally or in writing.
2. Whether or not a communication is a voluntary disclosure can only be determined by examining the facts and circumstances of each investigation. When responding to inquiries, employees will refrain from offering opinions or discussing hypothetical investigations with anonymous taxpayers or their representatives.

9.5.11.9.2 (09-09-2004)

All Employees

1. In responding to inquiries concerning the IRS voluntary disclosure practices, all IRS employees will refer to subsection 9.5.11.9, above.
2. Employees will provide the taxpayer with their title, name, employee ID number and telephone number.
3. Employees may provide taxpayers with a copy of the voluntary disclosure practice (see subsection 9.5.11.9, above).
4. If the taxpayer requests further information they will be referred to the CI field office covering the geographic area where the taxpayer resides.

9.5.11.9.3 (09-09-2004)

Designated Criminal Investigation Employees

1. The SAC should ensure that special agents handling voluntary disclosures are thoroughly familiar with the voluntary disclosure practice. (see subsection 9.5.11.9, above)
2. Whether a communication is a voluntary disclosure can only be determined by examining the facts and circumstances of each investigation.
3. Upon assignment, the special agent will number a primary investigation (PI) (see IRM 9.9, Criminal Investigation Management Investigation System). Numbering voluntary disclosures as a PI will discourage ineligible taxpayers or taxpayers attempting to game the system by "shopping" field offices in an attempt to obtain more favorable treatment. This process will assist CI in tracking voluntary disclosure applications and results.

9.5.11.9.4 (09-09-2004)

Responding to Taxpayer Inquiries

1. Special agents will provide the taxpayer and/or their representative with their title, name, employee ID number (not badge or commission number) and telephone number.
2. In addition to providing general information about the voluntary disclosure practice, special agents may discuss scenarios with taxpayers or their representatives to potentially ascertain if certain fact patterns might meet voluntary disclosure practice criteria. However, taxpayer representatives must file a valid power of attorney before discussing the specifics of their taxpayer's investigation.
3. Special agents may provide taxpayers with a copy of the voluntary disclosure practice (see subsection 9.5.11.9, above).
4. Special agents may discuss the voluntary disclosure practice and what constitutes a timely disclosure. Special agents should cite the timeliness criteria contained in the IRM and refer to the specific examples provided.
5. Special agents will inform all taxpayers that the voluntary disclosure practice **does not apply to taxpayers with illegal source income**.
6. Special agents should emphasize a voluntary disclosure only occurs when the communication is truthful, timely, complete, and when:
 - A. The 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.
7. Special agents will inform the taxpayer that a voluntary disclosure will not automatically guarantee immunity from prosecution. However, a voluntary disclosure may result in prosecution not being recommended.
8. Special agents will inform the taxpayers or their representative that a subsequent determination that the taxpayer has not fully cooperated or provided materially false information may result in the matter being referred for criminal investigation and/or the imposition of civil sanctions.
9. Special agents should ensure all taxpayers are provided with the name of a contact person and call back number.

9.5.11.9.5 (09-09-2004)

Disqualifying Factors

1. If a taxpayer expresses an interest in making a voluntary disclosure, he/she must be asked the following questions to determine if potential disqualifying factors exist:
 - A. Are you currently the subject of a criminal investigation or civil examination? (If yes, specify)
 - B. Has the IRS notified you that it intends to commence an examination or investigation? (If yes, specify)
 - C. Are you under investigation by any law enforcement agency? (If yes, specify)
 - D. Is the source of any of your income from illegal activity? (The IRS voluntary disclosure practice **does not apply to taxpayers with illegal source income.**) (If yes, specify)
 - E. Do you have any reason to believe that the IRS has obtained information concerning your tax liability? (If yes, specify)

Note:

If the taxpayer responds yes to any of the above questions, the facts and circumstances of each investigation must be clarified to determine if it is a disqualifying factor.

2. If there are no disqualifying factors the taxpayer may make a voluntary disclosure.

9.5.11.9.6 (09-09-2004) **Voluntary Disclosure Communications**

1. Field offices may adopt local procedure that facilitate voluntary disclosure communications. To assess a voluntary disclosure, it is best to meet with the taxpayer and/or their representative. It is desirable that the SAC, Assistant Special Agent in Charge (ASAC) or Supervisory Special Agent (SSA) chair this meeting. Other attendees might include representatives from the other operating divisions, CT Counsel, and/or any other interested parties.
2. The following taxpayer identifying information should be considered in ascertaining the completeness of the disclosure communication:
 - A. Taxpayer identifying information (including spouse)
 - name(s)
 - social security number(s)
 - address(es)
3. If a business entity is involved provide the business name, address, and employer identification number, if available.
4. Provide information on the tax periods:
 - A. Type(s) of return(s) (Form 1040, 1120, 941 etc.)
 - B. Type of tax(es) involved (income, employment, excise, etc.)
5. The communication must include a brief description of all omitted income, the tax scheme used by the taxpayer, and a dollar estimate of the total taxes owed.
6. A statement must be made by the taxpayer (either verbally or in writing) that he/she is willing to cooperate with the IRS in determining the correct tax liability and make good faith arrangements to pay in full, the tax, interest, and any penalties determined by the IRS to be applicable in full. **This is critical.**
7. The taxpayer can prepare amended returns for submission with their voluntary disclosure communication or wait to submit amended returns until after CI evaluates their communication and makes a recommendation to SB/SE Planning and Special Programs (PSP) Area Manager.
8. To better assess timeliness, the taxpayer should be asked to provide the reason(s) why they are making this disclosure.
9. Additional information may be required to assess the completeness, timeliness and truthfulness of the taxpayer's communication.

9.5.11.9.7 (09-09-2004) **Evaluating the Disclosure**

1. Special agents will evaluate disclosures to determine if the information provided is truthful and complete, and shall make a recommendation to the SAC, as to whether or not the taxpayer has met all voluntary disclosure practice criteria.
2. The evaluation should be completed as expeditiously as possible, ideally within 10 working days or less from the date the complete voluntary disclosure communication from the taxpayer has been received. The SAC should be apprised if an evaluation cannot be completed within 30 days.
3. As part of the evaluation process special agents will query the following databases:
 - A. The Criminal Investigation Management Information System (CIMIS)
 - B. Integrated Data Retrieval System (IDRS)
 - C. The Currency and Banking Retrieval System (CBRS) Database
 - D. The National Crime Information Center Database (NCIC)
4. If the indices checks (or any other evaluative steps) disclose potentially disqualifying information the taxpayer should be contacted and offered an opportunity to provide an explanation.
5. If a satisfactory explanation cannot be provided, this may constitute a disqualifying factor.
6. If the indices checks disclose no disqualifying information, the voluntary disclosure will be referred to the SAC, with a recommendation that the matter be forwarded to SB/SE.

9.5.11.9.8 (09-09-2004) **Transmitting the Voluntary Disclosure to SB/SE**

1. If the SAC, concurs with the special agent's recommendation that the voluntary disclosure(s) meets all IRS criteria, a transmittal memorandum will be forwarded to PSP for further action. A list of all PSP offices can be found on SB/SE's PSP webpage. See Document Manager for the Voluntary Disclosure Transmittal Memorandum.
2. Planning and Special Programs will contact the taxpayer regarding further action in the voluntary disclosure process, a copy of the transmittal memorandum **will not** be sent to the taxpayer and/or their representative.
3. All relevant information received by CI regarding a voluntary disclosure will accompany the transmittal memorandum. The transmittal memorandum will be sent to PSP (or other designated operating unit).

Note:

" Restricted for Law Enforcement Use Only" indicates checks or information will not be transmitted to PSP. This information will be maintained in the CI investigation file .

4. If PSP later determines that the taxpayer has not cooperated fully or provided materially false information the matter will be referred back to CI for further evaluation and possible criminal investigation via the fraud referral process.

9.5.11.9.9 (09-09-2004)
Negative Evaluations

1. If the SAC determines that a disclosure **does not meet** all IRS voluntary disclosure criteria, a letter will be sent to the taxpayer informing them of the reason(s) he/she is ineligible to participate in the IRS's voluntary disclosure practice. It is not necessary to cite specific reasons for the rejection if it would compromise an ongoing investigative matter.
2. Criminal investigation will evaluate the criminal potential of all negative evaluations. If the matter is not acceptable for investigation, it will be forwarded to PSP for whatever action they deem appropriate.

9.5.11.9.10 (09-09-2004)
Record Keeping

1. The SAC, will maintain a complete copy of accepted and rejected voluntary disclosures.

Note:

API is to be numbered for each voluntary disclosure assignment. This will assist CI in tracking voluntary disclosure applications and results, and will discourage taxpayers from "shopping" offices for favorable treatment.