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THE TAX LAWYER

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### IRS Foreign Account Disclosure: What About The States?

You may be inundated with information about disclosing your foreign accounts to the IRS and making up for your past tax return and FBAR transgressions. After all, though there's a debate about whether IRS programs amount to ***bona fide*** amnesty, that's what you want. See [IRS Offshore Amnesty: Second \(Last\) Chance](#). It's not inexpensive, but paying back taxes, interest, and penalties is a lot better than the alternative—having them track you down and lower the proverbial boom.

But one thing you're ***not*** inundated with is information about your ***state*** tax problems. As if worrying about the IRS knocking on your door wasn't bad enough, you have your friendly ***state*** tax collector(s) too. Since state income taxes are smaller than federal, you understandably worry about the IRS first and foremost.

Then you can deal with your state—in some cases, more than one! If you hire a tax lawyer to help you, he or she will almost always discuss state taxes only after resolving federal. But the assumption is that ***eventually*** state issues must be resolved too. After all, there's a free flow of information between the IRS and the states.

The IRS has had a general program of voluntary disclosure for decades as well as various programs aimed at assessing particular tax issues. For example, in 2003 the IRS established a "Voluntary Compliance Initiative" for taxpayers who had underreported their U.S. income tax liability using

offshore payment cards (including credit, debit, or charge cards) issued by banks in foreign jurisdictions or offshore financial arrangements. See [Rev. Proc. 2003-11, 2003-1 C.B. 311](#).

But it wasn't until the UBS prompted Swiss banking mess that the IRS (in 2009) came out with a pre-packaged program for voluntary disclosure of offshore accounts. See [2009 Offshore Voluntary Disclosure Program](#). About 15,000 people came forward under the IRS initiative, and most of these cases are still not finished. Some are, and it's a great feeling to sign off on the IRS closing agreement after filing amended tax returns and FBARs and to really be *through*.

There was no prepackaged IRS program during 2010, but several thousand taxpayers still came forward on an individualized basis. Most of them are still being processed. More recently, the IRS has started another prepackaged voluntary disclosure program in 2011. See [2011 Offshore Voluntary Disclosure Initiative](#). Under this new 2011 Offshore Voluntary Disclosure Initiative (OVDI), taxpayers can be more or less guaranteed they will not be prosecuted and they get correct their tax and foreign account transgressions. See [Tax Amnesty: IRS Voluntary Disclosure Part Deux](#).

**States Too?** A few states have no state income tax, but most states have one. They want to get in on the foreign account gravy train. If you didn't report your interest income to the IRS from an undisclosed Swiss account you likely didn't report it for state tax purposes either. The IRS voluntary disclosure program involves amending up to eight income tax returns to fully disclose and report income. While you are preparing the amended federal returns, you should be prepared to amend your state tax returns too.

After the IRS's 2009 program, at least seven states (Alabama, Connecticut, Hawaii, Minnesota, New Jersey, New York, Ohio and Wisconsin) replicated the IRS program for themselves. California was a notable no-news state. But for the FTB's comments on the IRS's 2009 program see [California Taxpayers Urged to Report Offshore Bank Income](#). Now, most states have something in place, either as a knock-off of the IRS program or as some other kind of me-too. Clearly, if you are

filing amendments to your federal tax returns you should be filing (or at least considering filing) the state counterparts as well. In some states, this is mandatory. Even if it isn't mandatory, it is clearly good business.

Still, it's more extensive than just filing state counterpart amended returns. You may need to formally apply for admission to your state's voluntary disclosure program. Some states may (after getting information about you from the IRS) simply send you a bill, but don't count on it. In extreme cases, if you neglect your state tax responsibilities, the state could seek criminal penalties even though the IRS has blessed you.

In some cases, simply filing amended state tax returns noting that they are being filed to conform to the federal returns may be enough. If the state doesn't formally require anything else, that could be accepted and not call attention to the taxpayer. Elsewhere, that kind of stealth filing might be a major mistake. Whatever you do, get some help and attend to your state tax and disclosure issues too.

For more information, see:

[Still Have A Foreign Bank Account?](#)

[What To Do If Your Foreign Account Is A PFIC](#)

[Still More Foreign Account Worries!](#)

[Six Questions About Secret Foreign Bank Accounts](#)

[Ten Things To Know About Offshore Bank Accounts](#)

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