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THE TAX LAWYER

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### IRS Notice Snafus? Yes, Even With Offshore Accounts

Sometimes tax notices keep turning up even after you've resolved the problem. Computers act up, mistakes happen, and once something gets in the system, it can be difficult to get it out. See [Dionne Warwick Proves IRS Tax Liens Can Be Wrong](#). Nearly everyone has experienced this.

Participants in the Offshore Voluntary Disclosure Program ([OVDP](#)) can breathe a big sigh of relief when their packet of 8 amended tax returns and 8 FBARs goes to the IRS. They came forward just like the IRS wants and paid 8 years of taxes, penalty and interest on undisclosed accounts. In some cases the next contact from the IRS is the closing agreement. See [New IRS Offshore Amnesty Announced: Third Time's A Charm](#).

There's an even bigger relief once the taxpayer signs the closing agreement and makes final payment of the miscellaneous offshore penalty (usually 27.5% of the highest account balance). But what if tax notices start showing up like falling leaves, a kind of IRS notice purgatory? Administrative glitches like the following can happen.



**Misapplication of Payment.** When the IRS receives payment with amended tax returns for taxes, interest and penalties, the IRS may misapply the payment. Suppose your amended returns call for \$10 due for 2007 and \$100 for 2008, so you send \$110 to cover both. The IRS may apply the entire \$110 to 2007. That leaves an **overpayment** of \$100 for 2007 and **underpayment** of \$100 for 2008.

That means notices. Despite participation in the OVDP, an IRS computer automatically demands payment despite the \$100 overpayment for 2007. Notices may even say “Second Notice” although no first notice was ever issued. Letter writing and phone calls ensue, but you could even receive a Notice of Intent to Levy.

**Endless Penalty Notices.** After a closing agreement was signed (and full payment was made), one person received numerous IRS penalty notices for delinquent Forms [3520](#) and [3520-A](#) for the **same** 8 years. Like a spigot that’s hard to turn off, the notices continued despite letters, calls and more letters. None of the IRS offices or personnel could stop them. Eventually, the taxpayer was told to forward the erroneous notices to the voluntary disclosure contact within the IRS CID for his state who would pass them to the IRS CID in Washington, D.C.

**Underpayment Interest.** With 8 amended tax returns and 8 FBARs, the taxpayer pays all taxes, interest and a 20% penalty. That should stop interest from running, as only the 27.5% miscellaneous offshore penalty will remain. However, the IRS may calculate interest through signing the closing agreement so additional interest is due. IRS agents seem to have no authority to correct this but say the taxpayer will receive a refund or offset for the extra interest on their next tax return.

These are minor glitches, of course. The IRS is huge and deals with massive amounts of data. For that reason, be diligent with every IRS notice in any setting. Eventually you’ll get the problem resolved.

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