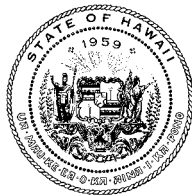


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August 6, 2009

## **TAX INFORMATION RELEASE NO. 2009-03**

RE: State of Hawaii Voluntary Disclosure Guidelines for IRS Voluntary Disclosures of Undeclared Offshore Bank Accounts

### **PURPOSE**

The purpose of this Tax Information Release (TIR) is to announce a concurrent voluntary disclosure program for those participating in the present Internal Revenue Service (IRS) voluntary disclosure program for undeclared offshore bank account income.

In March 2009, the IRS announced guidelines for taxpayers making voluntary disclosures of unreported income generated through undeclared offshore bank accounts located in countries outside the United States.

In response to increased federal enforcement efforts associated with unreported offshore income, the IRS encouraged taxpayers to take advantage of the voluntary disclosure program stating "[t]axpayers with undisclosed foreign accounts or entities should make a voluntary disclosure because it enables them to become compliant, avoid substantial civil penalties and generally eliminate the risk of criminal prosecution." In furtherance of the IRS' efforts, the Department of Taxation (Department) is likewise encouraging taxpayers with corresponding Hawaii income sourced from undeclared foreign bank accounts to make a voluntary disclosure with the Department.

### **ELIGIBILITY & PROCEDURE**

Taxpayers making a voluntary disclosure of undeclared offshore bank account income pursuant to the IRS' guidelines that would like to also make a voluntary disclosure with Hawaii should initiate contact with the Department by contacting the Offshore Voluntary Disclosure Coordinator at (808) 587-1603 in order to determine whether the taxpayer is eligible for the Hawaii voluntary disclosure program. The Offshore Voluntary Disclosure Coordinator will request the identity of the taxpayer and determine whether the taxpayer is under civil examination or criminal investigation. Persons under civil examination or criminal investigation are not eligible to participate in the Hawaii program; all other taxpayers are eligible.

Upon receiving confirmation from the Offshore Voluntary Disclosure Coordinator that the taxpayer is eligible for the Hawaii program, the taxpayer must submit the following:

- A cover letter identifying the taxpayer and their representative and also stating that the voluntary disclosure is being made to resolve unreported offshore Hawaii taxable income pursuant to this TIR and IRS guidelines. This letter must also include a statement, signed by the taxpayer under penalties of perjury, that none of the unreported offshore taxable income being reported is illegal source income.<sup>1</sup> Unreported income sourced from illegal activities is not eligible for this program;
- A copy of the voluntary disclosure package submitted to the IRS (*i.e.*, letter, schedules, attachments, summaries, *etc.*);
- Amended returns for any taxable year for which the statute of limitations remains open with the marking "OFFSHORE VOLUNTARY DISCLOSURE" on the top of the first page of the return; and
- Full payment of tax and interest due and payable at the time of the submission.

Voluntary disclosures pursuant to this TIR must be mailed to the following:

Offshore Voluntary Disclosure Coordinator  
P.O. Box 259  
Honolulu, Hawaii 96809-0259

### **WAIVER OF PENALTIES & PROSECUTION**

Any person submitting a voluntary disclosure pursuant to this TIR will generally not be referred by the Department for criminal prosecution. Furthermore, the Department will not assess any civil penalties on any timely and complete submissions.

### **DEADLINE**

In order for a voluntary disclosure to be timely under this TIR, the taxpayer must make a timely voluntary disclosure with the IRS pursuant to its offshore undeclared bank account voluntary disclosure guidelines. Furthermore, the taxpayer must make contact with the Department's Offshore Voluntary Disclosure Coordinator by the same deadline. As of the date of this TIR, a timely federal disclosure is made by September 23, 2009. Therefore, a timely voluntary disclosure for Hawaii purposes is made by notifying the Department of the intent to submit a voluntary disclosure pursuant to this TIR by September 23, 2009.

### **INCREASED PENALTIES FOR NOT DISCLOSING UNREPORTED INCOME**

Beginning October 1, 2009, any taxpayer subsequently audited by the Department (or the IRS where the IRS adjusts for unreported foreign bank account income) that includes adjustments to

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<sup>1</sup> The Department conforms to the IRS Criminal Investigation Division's characterization of what is considered "illegal source" income.

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Hawaii taxable income due to unreported foreign bank account income will be subject to all civil penalties available by law, including the 50% civil fraud, 25% negligence, and 20% substantial understatement penalties. Furthermore, taxpayers found to have unreported income from foreign bank accounts will be assessed unpaid taxes and penalties on up to six taxable years where unreported income constitutes 25% or more of the amount stated on a return pursuant to Act 166, Session Laws of Hawaii 2009.

Lastly, the likelihood of referral to the Department's Criminal Investigation Unit increases for those that fail to submit a voluntary disclosure pursuant to this TIR and are later selected for examination.

### **ADDITIONAL INFORMATION**

Persons needing additional information regarding this TIR may contact the Department at (808) 587-1577.

Information regarding the IRS' voluntary disclosure guidelines for undeclared foreign bank accounts can be found on the web at:

<http://www.irs.gov/newsroom/article/0,,id=206012,00.html?portlet=7>

A handwritten signature in black ink, appearing to read 'Kurt Kawafuchi', is written in a cursive style.

KURT KAWAFUCHI  
Director of Taxation