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California Tax Amnesty Begins August 1, 2011

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California's Voluntary Compliance Initiative Two (Tax Amnesty) period runs from August 1, through October 31, 2011. California taxpayer's are eligible for the amnesty if for years prior to 2011, they either (a) participated in abusive tax avoidance transactions or (b) had unreported income from the use of offshore financial arrangements. The Franchise Tax Board will administer the program and issue forms and instructions. However, as of this moment the forms are not available.

Taxpayer who enter the California amnesty program will benefit in that they can avoid penalties, criminal and civil if they enter the program by filing amended returns for all years in which there is unreported income, reporting all income and paying in full all taxes and interest due.

The California program differs in an important ways from the current IRS Second Supplemental Voluntary Disclosure Initiative. First, the California program covers taxpayers who participated abusive tax avoidance arrangements (tax shelters) whereas the IRS program only applies to foreign held financial accounts. Second, the IRS program covers years 2003-2010 whereas the California program appears to cover "all years" in which the taxpayer had unreported income from either stated category. Third, the time frames are different. The IRS program ends August 31, 2011 whereas the California program begins August 1 and ends October 31, 2011.

It is unclear based upon the legislative history if California will provide any information, under information exchange agreements with the IRS regarding taxpayers who participate in the California amnesty program. The IRS may provide information to California on taxpayers who enter its program and file amended returns. Under this scenario a taxpayer who is a participant in the first or second IRS voluntary disclosure program may wish to enroll in the California program out of an abundance of caution.

The first IRS voluntary disclosure program ended October 15, 2009, but if taxpayers did not file amended state returns, just federal returns the California program is an interesting clean-up option.

A voluntary disclosure constitutes an admission of a false statement, and unreported income, (acts of tax evasion) and is an agreement of cooperation in tax investigations. The decision to enter either the IRS or California program has important consequences and should be done only after consulting with counsel.

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