

LEGAL UPDATE

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By: Michael P. Dunworth, Robert W. Ray and Eric B. Woldenberg

INTERNAL REVENUE SERVICE ANNOUNCES NEW OFFSHORE VOLUNTARY DISCLOSURE INITIATIVE

On February 8, 2011 the IRS announced a new Offshore Voluntary Disclosure Initiative for taxpayers with foreign financial accounts who have failed to file Form TD 90-22.1 *Report of Foreign Bank and Financial Accounts*, commonly referred to as the "FBAR." The new initiative, which is available until August 31, 2011, provides for a maximum 25% penalty on a taxpayer's highest aggregate foreign account balances for the years 2003-2010. In addition, a new 12.5% maximum penalty is available for taxpayers whose offshore account balances or assets did not exceed \$75,000. While this is not as favorable as the Offshore Voluntary Disclosure Program that ended on October 15, 2009, taxpayers were subject to a maximum 20% penalty on their highest aggregate foreign account balances during the years 2003-2009, it is significantly more favorable than the penalties that can be imposed under existing law.

The new offshore disclosure initiative is only available to taxpayers whose offshore activities are not currently under investigation by the IRS. Taxpayers with undisclosed offshore financial accounts or assets who do not voluntarily disclose their holdings are subject to penalties for failure to file the FBAR of up to 50% of the amount of their offshore accounts or assets *for each year that an FBAR is not filed*, as well as criminal prosecution.

Pryor Cashman attorneys Michael Dunworth, Robert Ray and Eric Woldenberg have extensive experience representing clients with offshore financial accounts under the original offshore voluntary disclosure program. Clients can contact Michael, Bob or Eric, or any Pryor Cashman tax attorney, if they have questions regarding their foreign account disclosure obligations.

The foregoing is merely a discussion of the new offshore voluntary disclosure initiative announced by the IRS. If you would like to learn more about this topic or how Pryor Cashman LLP can serve your legal needs, please contact Michael Dunworth at (212) 326-0833, Robert Ray at (212) 326-0865 or Eric Woldenberg at (212) 326-0865.

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Michael Dunworth is a partner in Pryor Cashman's Tax Group with a broad-based transactional practice. Mr. Dunworth advises on federal income tax issues involved in international and domestic project financing, infrastructure investments, mergers and acquisitions, equipment and facility leasing, real estate and partnership transactions, and related tax controversy work. He has represented investors in and sponsors of investment funds, lessors, lenders and lessees in leasing transactions, and investors in real estate, affordable housing, historic rehabilitation, alternative energy and infrastructure transactions.

Mr. Dunworth's recent experience includes representing:

- An Australian investment fund in the acquisition of a \$1.6 billion of electric generating stations
- The fund sponsor on the restructuring of a \$60 million international real estate fund
- A real estate developer in obtaining a private ruling from the IRS on the treatment of payments in lieu of taxes (PILOT)
- A Singapore investment fund on structuring the acquisition of a partnership interest in a \$350 million electric transmission line project
- The fund sponsor in the formation of a \$150 million real estate fund
- Investment banks in developing partnership structures for infrastructure investments
- A foreign real estate fund in the acquisition of a \$56 million multifamily housing development
- The subsidiary of a Japanese bank in connection with the audit of its leasing portfolio
- Parties to like-kind exchange transactions involving commercial real estate
- The Creditors' Committee in the Mirant Corporation bankruptcy
- Lessors and lessees in restructuring their lease obligations
- Equity investors, lenders and lessees in true lease financings of aircraft, rolling stock, equipment and facilities located in Austria, Belgium, Canada, France, Germany, Ireland, Korea, New Zealand, The Netherlands, Singapore and the United States
- Sellers and purchasers of leveraged lease portfolios
- The lenders in a series of structured financings for California power companies
- Investors in U.S. wind energy projects
- Investors and developers in historic rehabilitation projects
- Investors in affordable housing projects

Mr. Dunworth, who served in the United States Marine Corps Reserves, practiced as a certified public accountant during the early 1980's.

He received his LL.M in Taxation from New York University School of Law, his J.D. from Pace University (*cum laude*) and a B.S. in Accounting from Manhattan College.



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Robert W. Ray is a partner in Pryor Cashman's Litigation Group, with special emphasis on white collar criminal defense, corporate governance and compliance, internal investigations and general litigation, including civil RICO and commercial fraud. Bob's experience and expertise include matters involving securities regulation, commodities trading, insurance transactions, money laundering, forfeiture, the Sarbanes-Oxley Act, the Bank Secrecy Act, environmental compliance, health care fraud, antitrust, the False Claims Act and the Foreign Corrupt Practices Act. He has also litigated at all levels in New York state courts. For a list of Bob's representative matters, please [click here](#).

Bob joined the Independent Counsel's office in Washington, D.C. in 1995 and succeeded Kenneth Starr as Independent Counsel in October 1999. While Independent Counsel, Bob was responsible for, among other things, the In re Madison Guaranty investigations, which concluded with published final reports on matters involving FBI files, the White House Travel Office, Whitewater and Monica Lewinsky. Prior to succeeding Starr, Bob supervised, conducted and participated in complex, long-term and multi-defendant federal prosecutions involving public corruption, organized crime, violent crime and narcotics trafficking at all levels and stages in federal courts. [Click here](#) for a list of reported decisions.

From 1989 through 1995, Bob was an Assistant U.S. Attorney in the U.S. Attorney's Office for the Southern District of New York. Prior to that he was a judicial law clerk for the Honorable Frank X. Altimari in the U.S. Court of Appeals for the Second Circuit.

Bob is a 1985 cum laude graduate of Washington and Lee University School of Law, where he was a member of the Washington and Lee Law Review, was chosen as the best oralist at the John W. Davis Moot Court Competition (as well as being runner-up for best brief), and was a quarter finalist in the William and Mary Moot Court Competition. During 2004-2007, Bob served on Washington & Lee's alumni advisory body as a member of the Law Council.



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Eric B. Woldenberg joined Pryor Cashman in 1984 and has been a partner since 1988. Eric is the Chairman of the Tax Group and specializes in taxation and estate planning. Eric has extensive experience in negotiating and structuring a broad range of transactions, including mergers and acquisitions of both private and public companies. A significant portion of his practice is devoted to estate and tax planning for high net worth individuals and families. Eric is regularly involved with tax controversy work involving federal and state tax matters.