

III. VOLUNTARY DISCLOSURE POLICY

It is currently the practice of the IRS that a voluntary disclosure will be considered along with all other factors in the investigation in determining whether criminal prosecution will be recommended. Prior IRS voluntary disclosure practices creates no substantive or procedural rights for taxpayers, but rather are a matter of internal IRS practice, provided solely for guidance to IRS personnel.

A voluntary disclosure will not guarantee immunity from prosecution, yet a voluntary disclosure may result in no prosecution recommendation. However, since the IRS application of the voluntary disclosure practice does not automatically result in immunity from criminal prosecution, taxpayers should be advised that they cannot rely on the fact that others may not have been prosecuted.

A voluntary disclosure occurs when the communication is:

- truthful;
- timely;
- complete;
- when the taxpayer shows a willingness to cooperate (and does in fact cooperate) with the IRS in determining his or her correct tax liability.

A disclosure is timely if it is received before:

- the IRS has initiated an inquiry that is likely to lead to the taxpayer, and the taxpayer is reasonably thought to be aware of that investigative activity;
- some event known by the taxpayer occurred, which event is likely to cause an audit into the taxpayer's liabilities.

An example of what is not a voluntary disclosure is a letter from an attorney stating his or her client, who wishes to remain anonymous, wants to resolve his or her tax liability in exchange for IRS assurance that the client will not be criminally prosecuted. This is not a voluntary disclosure because the identity of the taxpayer has not been revealed. The conclusion would be the same whether the attorney made or offered payment on behalf of the anonymous client or devised some method to prevent access to the client's correct tax returns, i.e., placing the correct tax returns in a safety deposit box or proposed any similar variation.