



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

SMALL BUSINESS/SELF-EMPLOYED DIVISION

March 1, 2011

MEMORANDUM FOR ALL OVDI EXAMINERS

FROM: Monica L. Baker  
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Director, International Individual Compliance

SUBJECT: Use of Discretion on 2009 OVDP Cases

The purpose of this memorandum is to convey the IRS position regarding the use of discretion to resolve currently open 2009 OVDP cases.

In limited circumstances, Revenue Agents certifying timely filed 2009 OVDP cases will be allowed to consider exercising discretion. Although examiners can consider exercising discretion, this does not mean that taxpayers who fall within the below mentioned categories will automatically have their cases resolved using discretion. The standards previously utilized for the 2009 OVDP discretion approach should be applied in determining whether the Revenue Agent will agree to propose an offshore penalty less than 20%.

Exercising discretion for timely filed 2009 OVDP cases will be considered only in the following instances:

- Cases where the Revenue Agent received an approval email from a Technical Advisor (TA) prior to February 8, 2011: Upon receipt of the Form 906 from the taxpayer, the Forms 906, approval email from TA and related files will be forwarded to Technical Services for review and closing.
- Cases where a Revenue Agent is awaiting a response from the TA (email sent for approval before February 8, 2011) prior to issuing the Form 906: The TA's will review the proposed recommendation and email the approval, if appropriate, to the Revenue Agent to be included in the case file before closing. Upon receipt of the Form 906 from the taxpayer, the Forms 906, approval email from TA and related files will be forwarded to Technical Services for review and closing.
- Cases where substantive written or oral discussions concerning the assertion of an offshore penalty lower than 20 percent have taken place with a TA, Territory Manager, Group Manager, Counsel, or member of the national team (i.e. during a case assistance visit) and the discussions have been documented in the

agents case file prior to Feb 8, 2011: At such time as the examiner has reached a conclusion that a lesser offshore penalty should be assessed, an email request for approval will be sent to a TA and will include the contemporaneous documentation to support the approval request. If approved by the TA, upon receipt of the Form 906 from the taxpayer, the Forms 906, approval email from TA and related files will be forwarded to Technical Services for review and closing.

Questions should be referred through your management chain to your assigned Technical Advisor. Technical Advisors will follow established guidelines to elevate issues/concerns to appropriate LBI and SBSE program managers.