

PUBLICATION

Spotlight on Alabama: Program for Unreported Offshore Accounts

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On April 1, 2010, the Alabama Department of Revenue (Department) issued a News Release offering "...a time-limited opportunity for anyone trying to avoid Alabama taxes by using hidden, offshore bank accounts to come forward without penalty." Under this program, which the News Release states is similar to last year's program offered by the Internal Revenue Service, individuals and businesses have not later than September 30, 2010 to report their hidden assets, file past-due returns or amend prior-year returns, and "...properly report their Alabama tax liabilities." We assume that properly reporting such tax liabilities means paying all individual or corporate income taxes along with interest to the Department.

The News Release goes on to state that those who do (which again we assume means report the hidden account, file the past-due or amend prior-year returns, and properly report their Alabama tax liabilities) will "...avoid penalties and possible criminal prosecution by the Alabama Department of Revenue." The News Release does not address whether other agencies of the State of Alabama could nevertheless prosecute.

The Department has not as yet issued rules or other guidances as to this program, and it is uncertain as to whether the Department intends to do so. Nevertheless, the Department has stated in its News Release that "(f)ilers taking advantage of this program should write "Offshore" in red ink at the top of the Alabama return." The Department also instructed that the delinquent or amended returns can be sent to the Department at P.O. Box 327010, Montgomery, Alabama 36132-7010.

This program, however, is not available to all. According to the News Release, persons who are already under investigation by the Department or who have been contacted by the Department regarding their proper tax liability are not eligible for this program. The News Release quotes the Department's Commissioner in saying the following: "When these accounts are disclosed to the department by other sources, it will be too late to expect leniency." The foregoing limitations on who can participate in the program, combined with the Commissioner's quoted statement, indicates that the real duration of this program is on a case by case basis until, for example, the earlier of the person coming under investigation, the person being contacted by the Department, or the account being disclosed to the Department "by other sources" – but in any event not later than September 30, 2010.

We suggest that individuals and businesses desiring to participate in this program should first consult their tax counsel regarding the program's applicability to their particular circumstances and related issues unanswered by the News Release. If you have questions or wish to discuss this program, please contact any attorney in the Firm's Tax Department.