

Niles A. Elber Quoted in Tax Notes, 1 Year Later, Frustrations Remain for OVDI Participants

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Tax Notes

At this time last year, Swiss banks were embroiled in a fight with the U.S. government, Congress was deadlocked, Mitt Romney was defending his tax proposals, the New York Mets were out of playoff contention, and frustrated practitioners were agonizing over the IRS's seeming intransigence with the 2011 offshore voluntary disclosure initiative (OVDI).

What a difference a year makes.

One year after scrambling to submit applications for the 2011 OVDI, practitioners told Tax Analysts that little has changed and that to their knowledge, most of their participating clients haven't even been assigned revenue agents.

Of the 80 or so disclosures his firm is handling as part of the 2011 OVDI, 30 to 40 percent have been assigned revenue agents, said Niles A. Elber of Caplin & Drysdale. He said the 2011 OVDI was supposed to make the end of the process far more expedient than that experienced during the 2009 OVDI. Things have generally moved slowly, he said.

Elber said only a few of his cases were settled based on the taxpayer's initial submission, adding that the degree to which a revenue agent requests more information varies. Providing the information can get complicated, especially when dealing with foreign banks and other financial institutions that may not keep information necessary to file U.S. tax returns, he said. "Asking a bank for cost basis information from 1976 is nearly a fool's errand," Elber said.

A common complaint practitioners had with the 2009 OVDI was the relative inexperience of revenue agents working the cases. That seems to have improved for the 2011 OVDI.

"There are some agents who seem satisfied with 90 percent of the material being there, and some agents are looking for 99.9," Elber said. Trying to move cases along with a revenue agent who cannot be persuaded to accept the taxpayer's findings is a difficult task, and one that can end with an opt-out, he said. "It leaves you scratching your head. These are the cases that aren't closing easily," he said.

Elber lamented the disparate treatment, saying "Each taxpayer should experience the same set of circumstances as they're processed through the system."

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