



Robert W. Wood

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Dual Citizen Tax Relief From IRS



The IRS has released a “[fact sheet](#)” with favorable guidance for U.S. citizens residing abroad who failed to file U.S. tax returns and those pesky little FBARs (Treasury Forms [TD F 90-22.1](#)) for [foreign accounts](#). This is good news for many who have been wringing their hands over the IRS crackdown on worldwide reporting and FBARs.

Still, it’s not blanket relief. It depends on your facts and how reasonably you’ve acted. U.S. citizens planning to address their situation need to tread carefully.

Here are the basics:

1. If you make more than a minimum exemption amount and standard deduction, you must file a U.S. income tax return annually and report your worldwide income (regardless of where else it might be taxed).
2. If you failed to file U.S. taxes for many years, you generally only need to file six back years. But if you owe no tax on those returns, there should be no penalty.
3. For FBARs, you need to file annually if your non-U.S. accounts aggregate over \$10,000. For FBAR basics, see [Primer For First Time FBAR Filers](#).

That Was Then. Up to now, the IRS has applied the 2009 and 2011 [voluntary disclosure standards](#), which could mean losing lots of your savings to [FBAR penalties](#). Now the IRS is trying a more fact-specific but also more favorable approach.

Penalty Relief. The IRS says that if you live abroad, you won't face penalties provided you show you exercised ordinary business care and prudence and have reasonable cause. In assessing your care and prudence, relevant factors include your reasons for failing to meet your U.S. tax obligations; your compliance history; the length of time between your failure and later compliance; and circumstances beyond your control.

You also need reasonable cause. Relevant factors there include your education; whether you previously were subject to tax; whether you have been penalized before; and whether there were recent changes in the tax forms or law you could not reasonably be expected to know.

Depending on your facts and circumstances, you may be able to establish reasonable cause if you can demonstrate you were not aware of your obligations to file returns or pay taxes. In fact, here's an example:

Taxpayer is a U.S. citizen who lived in Country A for all of 2010 teaching English. He complied with Country A's tax laws and properly reported all his income on Country A tax returns. Although he earned income in excess of the applicable exemption amount and standard deduction, he did not timely file a federal income tax return for tax year 2010. After learning of his U.S. filing obligations, Taxpayer filed an accurate, though late, federal income tax return showing no tax liability after taking into account the Section 911 foreign earned income exclusion and the foreign tax credit for taxes paid to Country A. Taxpayer is not liable for a failure to file penalty, since the amount of tax required to be shown on the federal income tax return is zero. Similarly, Taxpayer is not liable for a failure to pay penalty, since the amount of tax shown on the return is zero.

For FBARs, the Fact Sheet says you should file delinquent FBARs and attach a statement explaining why they were late. You need not file FBARs due more than six years ago, since the statute of limitations is six years from the due date of the FBAR. No penalty will be asserted if the

IRS determines that the late filings were due to reasonable cause.

For more, see:

[IRS May Find “Innocent” FBAR Violation Willful](#)

[Should You File FBAR For The First Time?](#)

[IRS Relief To Canadian Dual Citizens](#)

[Oh Canada! Hating FBARs And FATCA](#)

[Get Ready For More FBAR Rules](#)

[Ten Things To Know About Offshore Bank Accounts](#)

[Ten Facts About Tax Expatriation](#)

[It’s Not Too Late To Disclose Foreign Accounts](#)

[IRS FBAR Frequently Asked Questions](#)

*Robert W. Wood practices law with [Wood LLP](#), in San Francisco. The author of more than 30 books, including *Taxation of Damage Awards & Settlement Payments* (4th Ed. 2009, [Tax Institute](#)), he can be reached at Wood@WoodLLP.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.*