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IRS May Issue Warning Letters on FBARs Instead of Penalties

by [Matthew Dalton](#)Summary by **taxanalysts**[®]

The IRS may send a warning letter in lieu of asserting penalties for failure to file a Form TD F 90-22.1, "Report of Foreign Bank and Financial Accounts," if it would be sufficient to bring the individual into compliance, an IRS official said May 17.



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Jason Kuratnick, IRS associate area counsel (Philadelphia), Small Business/Self-Employed Division, explained that the Office of Chief Counsel reviews every proposed FBAR penalty. "Our office is involved early" and is ensuring that adequate facts exist to support the proposed assessment, said Kuratnick. Once chief counsel approves an FBAR penalty, it stands behind it, he added. Kuratnick spoke on a panel at the Eastern Pennsylvania Working Together Conference in Malvern, Pa.

The largest penalties apply to persons who willfully violate FBAR requirements and include up to 50 percent of the value of the account that is not reported. Kuratnick said that when applying the willfulness penalty, the IRS looks for circumstantial evidence that the taxpayer had knowledge of a filing obligation, such as a prior warning letter or penalties. If a person who conducts all his banking in the U.S. decides to open an account in a foreign country, the IRS will be interested in the reasons for opening the account. It will also consider whether the account is inherited and how the taxpayer treated other inherited accounts.

Asked why Form 8938, "Statement of Specified Foreign Financial Assets," which requires similar information, didn't replace the FBAR, Kuratnick referred practitioners to a grid created by the IRS comparing the FBAR and Form 8938. (For the grid, see [Doc 2012-6878](#)  or [2012 TNT 63-68](#) .)

The FBAR filing requirements, and possible penalties, may prompt individuals who would otherwise comply to consider expatriation. "There are some people living overseas for whom compliance is so complex and expensive that they may consider giving up their citizenship or permanent resident status," said Marina Hernandez of MH Tax Services. Democratic senators introduced legislation on May 17 that would impose additional penalties for people who renounce their citizenship for tax reasons. It is unclear whether the bill would also apply to FBAR filing, which is required under Title 31. (For related coverage, see [Doc 2012-10616](#)  .)