



Robert W. Wood

THE TAX LAWYER

Jun. 4 2012 – 6:03 am

FBAR Penalties: When Will IRS Let You Off With A Warning?

This is a huge question for many but isn't easy to answer. U.S. taxpayers are once again approaching the increasingly momentous June 30th [FBAR](#) filing deadline. See [Foreign Accounts? Don't Forget June 30 FBAR Deadline](#). Since this deadline requires **receipt** by the due date and June 30 is a Saturday, you've **really** only have until June 29th. While tax returns were due April 17th, an automatic extension gives you until October 15th. Unlike tax returns, there's no extension for FBARs.



In recent years, the IRS has cracked down big time on:

Worldwide Income Reporting. U.S. citizens and permanent residents must report worldwide income on their U.S. income tax returns. See [10 IRS Rules for Stress-Free Foreign Accounts](#). Worldwide income means everything even if taxed somewhere else. If you have an interest in a foreign bank or financial account, you must also check “yes” (on [Schedule B](#)).

FBARs Too. All U.S. persons with foreign bank accounts must **also** file a Treasury Department Form, TD F 90-22.1—an [FBAR](#) by each June

30th for the preceding year. You must file an FBAR if the aggregate value of your foreign financial accounts exceeds \$10,000 at any time during the year. See [Get Ready For More FBAR Rules](#) and [IRS On What Is A Foreign Account](#).

[Is foreign account ignorance bliss?](#) Hardly. The IRS says a conscious effort to **avoid** learning about [FBAR reporting](#) might be “**willful**.” The IRS says failing to learn of foreign account reporting requirements can be evidence of “willful blindness.” See [Internal Revenue Manual, 4.26.16.4.5.3, Paragraph 6](#).

While the biggest worry may be those for whom tax filings are inaccurate and who have failed to file (or properly file) FBARs, just focusing on FBARs can be frightening enough. See [New IRS Offshore Amnesty Announced: Third Time’s A Charm](#).

FBAR Penalties. The penalties for failure to file an FBAR are worse than tax penalties. Failing to file an FBAR can carry a civil penalty of \$10,000 for each non-willful violation. But if your violation is found to be **willful**, the penalty is the greater of \$100,000 or 50 percent of the amount in the account for **each** violation—and each year you didn’t file is a **separate violation**.



Image via advisor.ca

Go to Jail? Criminal penalties for FBAR violations are even more frightening, including a fine of \$250,000 and 5 years of imprisonment. If the FBAR violation occurs while violating another law (such as tax law, which it often will) the penalties are increased to \$500,000 in fines and/or 10 years of imprisonment. Many violent

felonies are punished less harshly.

Moreover, the assessment of a civil penalty does not preclude criminal penalties or prosecution. Fortunately, one IRS official has said that the IRS may decide to [simply issue a warning letter](#) rather than penalties. The goal is compliance with the rules, the IRS suggests, **not** penalties.

In assessing whether penalties are to be applied, especially willfulness, the IRS looks at such issues as inheritance, how other accounts are treated, etc. Although filing prospectively is easy, determining how to address past transgressions isn't. See [Is Closing Foreign Bank Accounts An Alternative To Disclosure?](#) Get some advice about your specific facts.

For more, see:

[Primer For First Time FBAR Filers](#)

[Got FBARs? But Which One?](#)

[Get Ready For More FBAR Rules](#)

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

[New FBAR Filing Deadline Approaching](#)

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

*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 with 2012 Supplement, [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.*