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THE TAX LAWYER

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Government Extends FBAR Filing Time

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FBARs are those now ever-present disclosure forms for foreign bank and financial accounts. You must file a Treasury Form TD F 90-22.1, also known as an FBAR, on your foreign accounts aggregating more than $10,000. Separate from tax returns, this is an annual filing due June 30 each year for the prior year. And you must file even if you're just a signatory and it's not your money. See Primer For First Time FBAR Filers.

If you don't file one, you could be in a world of hurt. Indeed, the penalties for failure to file FBARs are huge–considerably ***worse*** than tax penalties. Failing to file an FBAR can carry a civil penalty of $10,000 for ***each*** non-willful violation. 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***.

Even if you only have signature authority over an account but don't have a beneficial interest, these forms matter. And the rules are important for employees and officers of companies too. Fortunately, the Treasury's Financial Crimes Enforcement Network (FinCEN)—that's right ***not*** the IRS but FinCEN—has given certain investment advisor employees and officers even more time to file FBARs.

FinCEN Notice 2012-1 says employees and officers of an investment advisor with only signature authority have another one-year extension beyond the previously extended filing date of June 30, 2012. Thus, FinCEN Notice 2012-2 extends the deadline for those individuals until June 30, 2013. See FinCEN once again extends FBAR filing deadline for certain financial professionals.

Here are some basics about FBARs:

1. **Receipt by Due Date.** FBARs aren't governed by the usual "mailing is filing" rule applicable to tax returns. Make sure your FBAR is ***received*** by June 30. See E-Filing And Other FBAR Quirks.
2. **Who Must File?** U.S. taxpayers including citizens, residents, and entities that have foreign financial accounts totaling more than $10,000 at any point during the year.
3. **What's an Account?** Foreign bank and brokerage accounts are generally included, as are offshore mutual funds or pooled investments. However, hedge and private equity funds generally don't count. An account with a U.S. institution that holds foreign assets doesn't require a filing as long as you can't directly access foreign assets maintained in a foreign institution. But as noted above, foreign branches of U.S. institutions are treated as foreign.

What should you do if you have past filing obligations? Better see a tax lawyer. In some cases, you can just file the past due forms and explain that you didn't know of the requirements. But if your tax returns are inaccurate too, that can be dangerous. Moreover, even if you don't owe taxes, there are nuances to be observed and you should get some legal advice about your specific facts.

For more, see:

Should You File FBAR For The First Time?

Are You Getting Enough FBAR?

IRS May Find "Innocent" FBAR Violation Willful

Got FBARs? But Which One?

Get Ready For More FBAR Rules

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