



The FBAR

(Foreign Bank Account Reporting)

Why You May Incur Steep Penalties This Summer

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In this global economy more and more individuals are starting to find themselves with financial interests in other countries. Unfortunately for most of these individuals, they are unaware that failure to report these interests to Uncle Sam (**by June 30th**) may incur civil penalties up to **\$10,000**. For those who are aware and choose not to file, they could be looking at civil and criminal penalties in the hundreds of thousands of dollars and possible prison time... yes, prison time. Now that we have your attention, let's take a look at this "foreign" filing requirement known as the FBAR (IRS Form TD F 90-22.1).

As found on the IRS website, the following is a general description of the FBAR:

*"If you own or have authority over a **foreign financial account**, including a bank account, brokerage account, mutual fund, unit trust, or other types of financial accounts, you may be required to report the account yearly to the Internal Revenue Service... each **United States person** must file a Report of Foreign Bank and Financial Accounts (FBAR), if*

- 1. The person has a **financial interest in, or signature authority** (or other authority that is comparable to signature authority) over one or more accounts in a foreign country and*
- 2. The **aggregate value** of all foreign financial accounts exceeds \$10,000 at any time during the calendar year."*

So what exactly does all this mean? To better understand the FBAR we need to examine the key terms highlighted above, which will help you determine if you are required to file the FBAR.

Foreign Financial Account

As mentioned above, a financial account includes bank accounts (checking, savings, demand, deposit), financial instruments (stocks, bonds, mutual funds, derivatives and related securities), as well as non-monetary assets. What makes it a qualified foreign financial account, aside from it being held in a different country, is that it needs to be held with a foreign financial institution or an individual engaged in the business of a financial institution. Therefore, foreign individual bonds, notes and stock certificates are not treated as a foreign financial account, neither are unsecured loans to a foreign business.

United States Person

A United States Person is either a citizen or resident of the United States. Additionally, it encompasses domestic partnerships, single member LLCs, corporations, estates and trusts. For example, if a corporation holds foreign financial accounts, an FBAR needs to be filed on behalf of the corporation.

Financial Interest In, Or Signature Authority

Very simply put, if you have the power of disposition of money/property in a foreign financial account, then you will be required to file an FBAR if you meet all other conditions. A common misconception is that only account owners, those whose names appear on the account, are the only parties required to file the FBAR. If an individual does not own the account, but has the authority to take money or property out of an account either through written or direct oral confirmation with the foreign financial institution or its representatives, then they are deemed to have signature authority and are required to file the FBAR.

For example, if you have a Power of Attorney over someone who is required to file the FBAR, then you are considered to have signature authority and would be required to file the FBAR.

Aggregate Value

The FBAR instructions require the filing of the FBAR if the aggregate value of these financial accounts exceeds \$10,000 at any time during the calendar year; even if the amount does not generate interest or dividend income. Therefore, if you maintain several foreign financial accounts and the sum of these accounts surpasses the \$10,000 threshold, you will be required to file the FBAR. It is important to note that the aggregate value of the foreign financial accounts is not the value at the end of the year, but rather the maximum value of each account at any time during the year.

The following are a few examples to help demonstrate the above principals.

Situation	Is the FBAR Required?
You have two foreign financial accounts. Account "A" had a max value of \$7,000 in March and a year end value of \$2,000. Account "B" had a value of \$1,000 in March, and a max value of \$4,000 at year end.	Yes, as the \$10,000 threshold is met by the value of account "A" in March and the value of account "B" at year end (\$7,000 + \$4,000 = \$11,000).
You have a Power of Attorney over your parents who meet all FBAR filing criteria except for the "United States Person."	Yes, as long as you are a "United States Person," because the Power of Attorney qualifies you as having signature authority.
You have a stock certificate for a foreign company.	No, as the foreign financial interest is not maintained with a financial institution.
You own more than 50% stock in a domestic corporation that meets all FBAR requirements. Additionally, the company has already filed its own FBAR.	Yes, the majority owner will be required to file the FBAR as he or she will be considered to have signature authority even though the accounts are under the company's name.

ADDITIONAL INFORMATION

Filing Deadline

The filing deadline for the FBAR is June 30th. Unlike other Federal Income Tax Returns the FBAR is considered filed once the return is received by the Department of the Treasury, not the post mark date. Therefore, the FBAR could be considered late even if it is sent before June 30th and it is received as early as July 1st. There is no extension of time available to file the FBAR.

In the case that an individual does not have all of the available information to file a complete FBAR, the IRS indicates the FBAR should still be filed by June 30th. Subsequently, an amended return should be filed as soon as all information is available to file a complete FBAR.

Previous Years

If you discover that you were required to file the FBAR in previous years, the IRS indicates that the delinquent FBAR should be filed along with a statement explaining the late filing. If the IRS determines that the late filing is due to be "reasonable," penalties may be abated.

How Much Tax Do You Have To Pay On Foreign Accounts?

None! The FBAR is an informational return – only asking for a detail of foreign financial interests. The FBAR was established to assist in identifying and tracking illicit funds used for international terrorism, money laundering and related crimes. Thus, no tax is paid on the foreign interests. However, earned income on these accounts should be reported on the corresponding income tax returns.

Disclosures On Other Tax Returns

If you are required to file the FBAR you will need to address the following disclosures on the applicable tax return:

- Individuals – 2009 Form 1040, Schedule B, Questions 7a & 7b.
- Partnerships – 2009 Form 1065, Page 3, Question 10
- Corporations – 2009 Form 1120, Schedule N, Questions 6a & 6b.

FBAR Information & Resources

Due to the complexity surrounding what financial accounts are included, if signature authority has been established and what filing exemptions/relief is available for the FBAR, it is highly recommended that you contact a Certified Public Accounting Firm, with extensive experience in this area, to discuss the particulars of your situation. If you would like additional information or are not sure whether you are required to file the FBAR by June 30th, please feel free to contact us at (239) 263-2111.

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