

Important Due Date: Foreign Account Reporting Requirements (FBAR)

Article Summary:

- Foreign Account Reporting Requirement
- Financial Crimes Enforcement Network
- Penalties for Failure to File
- Type of Accounts Affected
- Form 8938 Filing Requirements

U.S. citizens and residents with a financial interest in or signature or other authority over any foreign financial account need to report that relationship by filing FinCEN Form 114 by April 18, 2017 if the aggregate value of the accounts exceeds \$10,000 at any time during 2016. Failure to file can result in draconian penalties.

CAUTION: Prior to 2016, the Form 114 was not required until the end of June. That due date has been moved up to April 18, 2017 for 2016 reporting. Previously there was no filing extension allowed, but the law that changed the filing date also gave FinCEN the authority to provide a six-month extension. FinCEN announced that an extension to October 16, 2017 will be automatic for anyone who was required to file Form 114 by April 18, 2017 but failed to do so.

Keep in mind that "financial account" includes securities, brokerage, savings, checking, deposit, time deposit, or other accounts at a financial institution. Commodity futures and options accounts, mutual funds, and even non-monetary assets such as gold are also included. It becomes a "foreign financial account" if the financial institution is located in a foreign country. If you own shares of a foreign stock or a mutual fund that invests in foreign stocks, and the stock or fund is held in an account at a financial institution or brokerage located in the U.S., this is not considered a foreign financial account, and the FBAR rules don't apply to it. An account maintained with the branch of a foreign bank physically located in the U.S. also is not a foreign financial account.

You may have an FBAR requirement and not even realize it. For instance, perhaps you have relatives residing in a foreign county and they have put you on their bank account in case something happens to them. If the value of the account exceeds \$10,000 at any time during the year, you will need to file the FBAR. Or if you are gambling on the Internet, that online casino may be located in a foreign country, and if your account exceeds the \$10,000 limit at any time during the year, you will have an FBAR reporting requirement.

You may also have an additional requirement to file Form 8938, which is similar to the FBAR requirement but applies to a wider range of foreign assets with a higher dollar threshold. If you are married filing jointly, you must file Form 8938 if the value of certain financial assets exceeds \$100,000 at the end of the year or \$150,000 at any time during the year. If you live abroad, the thresholds are \$400,000 and \$600,000, respectively. For other filing statuses, the thresholds are half of those amounts. The penalty for failing to file the 8938 is \$10,000 per year, and if the failure continues for more than 90 days after you receive an IRS notice of failure to file, the penalty can go as high as \$50,000.

As you can see, not complying with the foreign account reporting requirements can have some very nasty repercussions. Please call this office with questions or if you need assistance in meeting your foreign account reporting obligations.