

FBAR, and FinCEN, and Filing! Oh My!

By Deborah Cohn

On June 4, 2014, Ron Lundquist, a senior program analyst for the IRS's Small Business/Self-Employed Division reminded Taxpayers to be aware of possible Financial Crimes Enforcement Network (FinCEN) Form 114, Report of Foreign Bank and Financial Accounts (FBAR) reporting requirements as the June 30 deadline approaches for electronically filing the form.

In general, if you have a financial interest in or signature authority over a foreign financial account, including a bank account, brokerage account, mutual fund, trust, or other type of foreign financial account, and the aggregate value of the account(s) exceeds \$10,000 at any time during the calendar year, the Bank Secrecy Act may require you to report the account yearly to the Internal Revenue Service.

According to the IRS, an insurance policy with cash surrender value can "store" cash, available for withdrawal at a later time, and for this reason is treated as a financial account with a financial institution for FBAR purposes. If the insurance policy is located in a foreign country and has cash surrender value, the policy holder may have to report the policy on a FBAR. For FBAR reporting purposes, the cash surrender value of the policy is the value of the account. An insurance policy that is issued by a foreign-owned company but that is acquired through an insurance agent located in the United States is not a foreign financial account and is not required to be reported on a FBAR.

Rod Lundquist also highlighted the following important points that reflect recent developments and/or may not be commonly known:

- Although, for purposes of FBAR filing, "financial" means both monetary and non-monetary assets, *currently* taxpayers don't have to report Bitcoin on the FBAR. However, the IRS is continuing to monitor developments on virtual currency closely, and many professionals expect the IRS to change this position.
- Mutual funds held in brokerage accounts generally don't have to be separately reported on the FBAR since, in most cases, the reporting would be done on the brokerage account that owns the mutual fund interest.
- There are no age limitations on the FBAR filing requirement. Even a minor child who is a U.S. citizen and owns a reportable foreign financial account is required to file the FBAR. Tax filing status is not a consideration for FBAR reporting obligations.
- A U.S. resident with power of attorney over a principal's reportable foreign accounts is required to file FBARs on the reportable accounts, as long as the power of attorney authorization remains in force. Whether the attorney-in-fact ever exercised his or her authority is not relevant to the FBAR filing requirement.

Serious civil and/or criminal penalties may be imposed for failure to comply with these reporting requirements. If you or a loved one has a financial interest in or signature authority over a foreign financial account, we are happy to provide guidance. You may also want to speak with us if you are considering whether to serve as power of attorney over another individual's accounts, which may include reportable foreign accounts.