

## TAX ALERT

### Foreign Asset Reporting

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*With the beginning of the year full of extensions and estimates, it's important to not overlook the foreign account reporting requirements imposed by the Treasury Department and the Internal Revenue Service.*

The U.S. Code of Federal Regulation requires U.S. persons to file Treasury Department Form (TD F) 90-22.1 on or before June 30 of each calendar year for accounts maintained during the previous calendar year if –

- 1.) The person had financial interest in or signature or other authority over any foreign financial account, including bank, securities, or other types of financial accounts and,
- 2.) The aggregate value of these financial accounts exceeded \$10,000 at any time during the calendar year.

For Foreign Bank and Financial Accounts (FBAR) purposes, a U.S. person is any individual or any business organized under the laws of any U.S. State, territory or possession. Signature authority means that the foreign financial institution will act upon a direct communication regarding the disposition of assets in the account.

Under current law, the civil penalty for a non-willful violation is \$10,000 per violation. If the failure to report was willful, the penalty increases to the greater of \$100,000 or 50% of the amount in the account at the time of the violation. Criminal

penalties may range up to a \$500,000 fine and/or 10 years in prison.

If a U.S. person discovers that they are delinquent in their FBAR filings, the Internal Revenue Service (the Service) has stated that the person should file the required FBAR reports and attach a statement explaining why the reports are late. The Service has further stated that no penalty would be assessed if late filings were due to a reasonable cause.

On March 18, 2010, President Obama signed the *Hiring Incentives to Restore Employment Act* (HIRE Act). In addition to the well publicized employer payroll tax exemption for recently-hired qualified unemployed workers, the HIRE Act imposes additional reporting and disclosure requirements on any domestic entity with any interest in a “specified foreign financial asset” if the aggregate value of all such assets exceeds \$50,000.

A “specified foreign financial asset” is –

- 1.) An account in a foreign financial institution, and
- 2.) Any of the following assets not held in an account maintained by a financial institution

- a.) A stock or security issued by a foreign person,
- b.) Any financial instrument or investment contract where the issuer is not a U.S. person, and
- c.) Any interest in a foreign entity.

The information required under the HIRE Act varies depending on the type of “specified foreign financial asset.” Taxpayers with an interest in –

- 1.) Foreign bank accounts must provide the name and address of the financial institution where the account is maintained, as well as the account number,
- 2.) Foreign issued stocks and securities must provide the name and address of the issuer, and all pertinent information that allows the class or issue of such stock or security to be identified, and
- 3.) Foreign instruments, contracts, or entities must provide the names and addresses of all foreign issuers and counterparties, the maximum value of the asset during the tax year, and all pertinent information required to identify the foreign asset.

While some of this information duplicates the information already reported in the FBAR filing, the reporting of this information is in **addition** to the FBAR filing. Unlike the FBAR filing, which is a standalone form, the HIRE Act reporting requirements are made in conjunction with the taxpayer’s tax return. The HIRE Act reporting is effective for tax years beginning after March 18, 2010.

The penalty for failing to disclose the required information in a timely manner is \$10,000. If the failure to disclose continues for more than 90 days after the Service notifies the taxpayer of a failure to report, the taxpayer must pay an additional penalty of \$10,000 for each 30 day period (or fraction thereof) during which such failure continues, up to a

maximum of \$50,000. The HIRE Act also increases the accuracy related penalty from 20% to 40% for any portion of an underpayment which is attributable to any “undisclosed foreign financial asset”. As with the FBAR requirements, if the failure to disclose the required information is due to reasonable cause and not willful neglect, no penalty is imposed.

The additional reporting imposed by the HIRE Act provides a six year statute of limitations for assessment of tax on understatements of income attributable to foreign financial assets. However, the statute does not begin to run until the required information is submitted to the IRS.

Additional information regarding this requirement and draft forms will be forthcoming, as Congress has directed the IRS to issue regulations explaining the HIRE Act’s provisions.

In order to comply with these statutory reporting requirements, and in recognition of the hefty penalties involved we highly recommend that all entities keep these foreign account disclosure rules in mind.

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Gary Bowers, CPA, is a Partner and John Huskins, CPA, is a Senior Associate at Johnson Lambert & Co. LLP. Johnson Lambert & Co. LLP is North America’s largest insurance-focused audit and tax firm, and has served the insurance industry for twenty-five years. Since our inception in 1986, we have focused on distinct industry niches where we have distinguished ourselves as technical experts with a unique depth of experience specifically relevant to our clients’ needs. We serve a national and selectively international client base including over 350 insurance and insurance services entities from our offices in Florida, Georgia, Illinois, New Jersey, North Carolina, South Carolina, Vermont and Virginia. We also service associations and other non-profit organizations as well as employee benefit plans. For more information about Johnson Lambert & Co. LLP, visit [www.jlco.com](http://www.jlco.com).