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Deadline Change for Foreign Bank Reporting Wins Praise

From [Daily Tax Report](#)

FREE TRIALBy [Alison Bennett](#)

Aug. 4 — Practitioners are praising the new deadline for reporting foreign bank accounts tucked into the new law (Pub. L. No. 114-41) to extend the Highway Trust Fund.

The measure ensures that the due date for the Report of Foreign Bank and Financial Accounts (FBAR), formerly June 30, is now the same as the U.S. tax filing deadline of April 15—a change that practitioners said will help taxpayers who frequently didn't know that the deadlines were different.

Taxpayers can also now ask for the same six-month extension for FBARs that they can get for their tax returns—permitting them to file by Oct. 15. That option didn't exist before.

Penalty Abatement

In addition, Congress gave the Internal Revenue Service the authority to abate first-time penalties for taxpayers who miss the new April 15 FBAR deadline and don't formally ask for an extension, as long as they file by Oct. 15.

For the most part, practitioners gave high marks to the change in the legislation (H.R. 3236), signed by President Barack Obama on July 31.

“Coordinating the FBAR filing deadline with the tax filing deadline makes a lot of sense,” Bryan Skarlatos, a partner with Kostelanetz & Fink LLP in New York, said Aug. 4. “Many taxpayers had no idea that these were different forms that had to be filed at different places at different times.”

Aid to Voluntary Compliance

In fact, Skarlatos said, he has spoken to several taxpayers who thought the FBAR was just a schedule on their tax returns. “So, coordinating the two will help voluntary compliance,” he told Bloomberg BNA. “It also makes a lot of sense to give an abatement of the FBAR penalty to taxpayers who file a few months late.”

The change comes as the IRS is aiming a sharp focus on taxpayers who don't properly report their foreign bank accounts and assets, as part of a major effort to track down money hidden offshore.

The Kostelanetz and Fink attorney said although there has been a lot of publicity about foreign account reporting requirements in recent months, “there are thousands of taxpayers who are still learning about the requirements for the first time.”

Innocent Taxpayers

In addition, he said, many tax return preparers aren't as aware of these rules as they should be. “Anything that can

be done to get innocent taxpayers to understand and comply with the foreign asset filing requirements is a good idea,” Skarlatos said.

Dennis Brager, a former IRS senior trial attorney who now heads Brager Tax Law Group in Los Angeles, said in a news e-mail to clients that the filing deadline change was “a common-sense fix to an unnecessary problem,” with many taxpayers tripped up by the different due dates for the FBAR and their tax returns.

“There were many instances of individuals not realizing they had a filing responsibility after the June 30th deadline,” Brager said. “Those taxpayers were usually stunned to find that the extension of the filing date for their tax return did not extend the time to file their FBARs.”

Problems Remaining

One practitioner said although the changes seem to be part of an ongoing effort to make complying with the FBAR more workable, they don't fix some core problems with the form.

Jeffrey Neiman, a former federal prosecutor who is now a partner with Marcus Neiman & Rashbaum LLP in Miami and Fort Lauderdale, Fla., had mixed reviews.

He called the change in the highway legislation “a practical attempt to make the FBAR a more normal filing. It's good to see it treated more like other forms are treated.”

He said this change, along with new limits on the FBAR penalties that IRS examiners can impose, shows an effort to improve administration of the form. This shows “some recognition that changes need to be done with regard to the FBAR and its enforcement,” Neiman told Bloomberg BNA.

FBAR 'Useless.'

However, Neiman said, this doesn't fix the fact that many

taxpayers still don't know the form exists or needs to be filed.

In addition, Neiman said, the new legislation doesn't change a basic problem: The FBAR wasn't designed for tracking down tax cheats.

“The purpose of the FBAR was to root out money laundering as part of the Bank Secrecy Act. It has somehow morphed into being used for income tax compliance and that's not its original purpose,” he said.

In fact, with several other forms calling for similar reporting, “the FBAR is useless when it comes to income tax enforcement,” Neiman said. “Using this form with the anti-money laundering penalties to unfairly punish taxpayers who have accounts outside the United States is just wrong.”

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