What a Practitioner Needs to Know About Tax Assessment Dates

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David L. Rice, Dennis N. Brager and Jenny Wang examine the assessment date and how it affects individual taxpayers in connection with future events with the IRS.

The IRS for purposes of assessing and collecting taxes is bound by the statute of limitations (SOL) set forth in Title 26 of the U.S. Federal Code, generally known as the Internal Revenue Code ("Code"). The initial point for determining the statute of limitations' starting date is the assessment date.

It is extremely important for a tax practitioner to determine when the assessment date begins, as well as when the assessment period will end, as both dates could affect taxpayers in numerous ways. Of course, there are a number of exceptions that may alter these dates. A prudent practitioner must be aware of any applicable exceptions and accurately calendar all relevant dates.

If a tax return was filed late and the taxpayer omitted a substantial amount of income, is the assessment date the date the IRS receives the return or the date the taxpayer mails the return? Will the IRS be precluded from auditing the tax return even if three years from the assessment date have passed? Does the taxpayer have a right to a refund? If the taxes are dischargeable in bankruptcy, when will a taxpayer actually be able to file a Bankruptcy Petition to discharge those taxes? If a lien is placed on the taxpayer's property, when does the lien expire? If payroll taxes are involved, how long does the IRS have to assess an individual a trust fund penalty? Does the statute of limitations expire in three years if the taxpayer reports income from a foreign account but fails to file an FBAR or any other tax forms dealing with foreign accounts with the IRS? If a taxpayer is diagnosed with Alzheimer's and fails to file a claim for refund, is the statute of limitations applicable? If a taxpayer owes the IRS substantial monies, is it not important for the practitioner to understand when certain liabilities may no longer be collectible before deciding on a strategy to implement in the collection process?

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Failure to properly calendar the correct assessment dates and the relevant tax issues could result in the client losing a claim for refund, potentially paying more to IRS than necessary or unwarranted collection efforts against the client. The focus of this article will be to discuss exactly what an assessment date is and how it affects individual taxpayers in connection with future events with the IRS.

Overview of Assessments

An assessment is a recording of the amount a taxpayer owes the government and serves as the official record of the liability. The date the taxpayer is deemed to have filed a return is the date which begins the assessment statute.[1] The date of actual assessment is the date which begins the collection statute.

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An assessment is made when an assessment officer signs a summary record of assessment identifying the taxpayer, the character of the liability assessed, the tax period and the amount of the assessment.[2] The general rule is that a tax may not be collected until it has been assessed and must be assessed within three years of the filing of the return, regardless of whether the return is timely filed.[3] The SOL with respect to assessment includes not only the tax amount but also interest, additions to tax, penalties and additional amounts associated with the underlying tax assessment.

If the return is filed late, the three years begin to run from the date the return is filed. If the return is filed early or filed on the statutory due date, the filing date will be deemed to be that statutory due date, which is generally April 15. If the return is filed on extension, the filing date will be considered the date of delivery.

The mailbox rule explains how the date of delivery is measured.[4] If the return is received after the due date, the postmark date may be treated as the date of delivery, but only if the U.S. postmark date is on or before the due date (including extensions), the return is deposited in the mail in the United States in an envelope properly addressed to the appropriate IRS office with postage prepaid, and the return is delivered to the IRS office after the date it was due. If the return is altogether filed late, however, the general rule is that delivery equals filing.[5]

The return should be mailed either *via* certified mail or a designated delivery service. Currently, there are two companies that are designated private delivery services: Federal Express and United Parcel Service.[6]

So what exactly constitutes a sufficient return upon which the statute begins to run? The Tax Court follows a four-part test[7] in determining whether a return is sufficient: (1) there must be sufficient data to calculate the tax to calculate the tax liability; (2) the document must purport to be a return; (3) there must be an honest and reasonable attempt to satisfy the requirements of the tax law; and (4) the taxpayer must execute the return under penalties of perjury.

Once a tax has been assessed, the IRS will have 10 years from the time the tax was assessed to collect the tax. When the 10-year collection period expires, any federal tax liens that were filed in relation to the tax liability would expire as well. However, exceptions do apply and various events can alter the collection period. For example, a bankruptcy filing will extend the statute. Other exceptions to the general rule are also important to keep in mind.

Exceptions to the General SOL Rule

With any general rule there would be exceptions. These exceptions to the general three-year rule include filing a false return, willful attempt to evade tax, not filing a return at all, taxpayer's consent to extend the SOL, a finding of substantial omission of income on the return, tax that results from changes in income tax or estate tax credits, termination of private foundation status, special rules related to certain amended returns, failure to notify the Secretary of certain foreign transfers, gift tax on certain gifts that were not shown on the return or a listed transaction deemed by the IRS to be a tax-avoidance transaction.[8]

Extending the Statute of Limitations

It is important to note that the IRS and taxpayer can agree in writing to extend the SOL prior to its expiration. The IRS must notify the taxpayer that they can refuse to extend the limitations period or to limit the extension to certain issues or a particular period. With respect to taxpayers filing a joint return, one party cannot bind the other by signing the consent form unilaterally. Where a decedent owes taxes and several executors have been appointed, however, any or all of the executors can sign a consent form and such consent will bind the estate. On the other

hand, where a decedent dies intestate owing taxes with no administrator appointed, no one can sign the consent to extend the SOL (but beware of transferee liability).

Where a corporation has been dissolved under state law and has ceased to exist, no one can sign consent to extend SOL. If state law provides that directors can act for a dissolved corporation, however, any director can sign. Additionally, if the dissolved corporation continues to exist under state law, any officer of the corporation can sign.

The key point for a tax practitioner to take away is that any time the IRS issues a notice of deficiency or makes an assessment after an extension, a practitioner should check the authority of the IRS officials who executed consent, verify the timeliness of the notice or assessment and determine whether there was any mutual consent and any written agreement for purposes of extending the statute.[9]

False or Fraudulent Return

If a false return is filed and the IRS can prove that this was done with the intent to evade tax, such tax may be assessed or collection may occur at any time after the return has been filed.[10]

The IRS must prove by no less than clear and convincing evidence that the taxpayer's return was false or fraudulent and that the taxpayer intended to evade the tax. Any subsequent filing of a return to correct the falsity will not start the three-year assessment statute unless it is filed prior to the due date of the return.

No Return or Substituted Returns

Where the taxpayer fails to file a tax return, the tax can be assessed at any time or collection can start at any time without assessment. However, unlike a fraudulent return, the three-year SOL for assessment can be triggered upon the filing of a nonfraudulent, delinquent return. This is true even if the failure to file was due to fraud.[11]

Alternatively, the IRS frequently files what they term a substituted return when a taxpayer fails to file a return voluntarily. It is critical, however, to understand that the filing by the IRS of this substituted return has no bearing on the running of the SOL on assessment and collection. In other words, the statute will remain open indefinitely until the taxpayer files a sufficient tax return by satisfying the requirements discussed earlier.

Substantial Omission of Gross Income

When taxpayer omits or fails to report gross income which exceeds 25 percent of the reported gross income stated in the return, the general SOL rules will not apply. Instead, the IRS will get six years to make an assessment if the return omits (intentional or otherwise) more than 25 percent of gross income.[12]

What is jarring is that once the IRS has sufficiently demonstrated that there was a substantial omission of income (the IRS has the burden of proving the six-year SOL applies), the six-year SOL applies to all items in the return, not just the specific item or items that were omitted. However, note that the six-year rule only applies to items of gross income that are completely omitted from the return, as opposed to items which were merely understated or miscalculated.[13]

Listed Transactions

A listed transaction is another way of describing a transaction that has been identified by the IRS as a tax-avoidance transaction. The time for assessing tax with respect to such a transaction is one year after the earlier of the date on which the IRS receives the information it has requested, or the date a material advisor meets certain list requirements. Where the IRS lists the transaction after the return has been filed with such a transaction but before the assessment period has expired, the regulations require the taxpayer to attach a disclosure statement to the next filed return once the transaction becomes a listed transaction.

Amended Returns

The Code and regulations only set forth statutory filing dates for one original return and, absent a claim for refund, there are no specific procedural provisions for amending incorrect returns. If the original return satisfies the requirements of a valid return, then any subsequent amended returns will not have an effect on the SOL. In other words, the amended return does not extend the SOL for the assessment period.

The only exception is if an amended return is filed within a 60-day period of when the SOL for assessment is due to expire. In that case, the assessment period will be extended for an additional 60 days after the day the IRS receives the return. The IRS has the discretion to accept or reject an amended return, but the original return controls the SOL for assessment.

SOL in a Refund Claim

The general rule in a refund claim is for all taxes where a return is required, a claim for refund must be filed within three years from the time the original return was filed or within two years from the time tax was paid, whichever

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period expires later.[14] A claim for refund must include all of the requisite elements.[15] Of course, exceptions do exist.[16]

If a claim is disallowed, the taxpayer will have the right to an Appeals Office hearing. If taxpayer cannot resolve the issue at the Appeals level, the taxpayer should considering filing suit in federal district court or the U.S. Court of Federal Claims. The suit may be started no earlier than six months after the filing of the claim, unless the IRS denies the claim within that period of time. However, in no case can the suit be brought more than two years after the IRS mailed to the taxpayer by registered or certified mail a notice of disallowance of the refund claim.

As if there were not enough exceptions to the usual three-year statute of limitations on assessments, taxpayers with foreign-source income and foreign accounts must consider an additional layer of complexity.

In some situations, a claim for refund may be contingent on future events and may not be determinable until after the time period for filing a claim for refund expires. In those instances, a practitioner should file a protective claim for refund on behalf of the taxpayer. A protective claim preserves the taxpayer's right to a claim once the contingency is resolved.[17]

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Equitable Tolling

The IRS has the authority and discretion to recognize a tolling of SOL if the taxpayer's failure to act is due to a "financial disability" resulting from a physical or mental impairment that "can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months."[18] However, the taxpayer also is not considered to have a financial disability if there is a spouse or agent who could have acted on behalf of the taxpayer. The burden of proving the financial disability is upon the taxpayer.[19]

Bankruptcy Proceedings

The SOL also affects when taxes may be dischargeable in a bankruptcy proceeding. To be dischargeable, individual income tax liabilities must meet the following requirements[20]:

- More than three years have passed since the tax return generating the liability was due, including extensions. However, certain events such as prior bankruptcies, collection due process (CDP) hearings and innocent spouse relief may extend the three-year rule.
- The tax return was filed more than two years prior to the bankruptcy petition.
- At least 240 days have passed since an IRS assessment date (an offer in compromise extends the time period under this rule).

As discussed earlier, however, a bankruptcy filing will extend the statute on collections. In addition, any federal tax liens filed and attached to a taxpayer's property will not be discharged as part of a bankruptcy filing.

IRS Assessment of Trust Fund Recovery Penalty

The IRS has three years to assess a Trust Fund Recovery Penalty (TFRP) against an individual deeming that individual to be personally liable for unpaid payroll taxes. Assuming quarterly Form 941s were timely filed, IRS would have three years from the statutory due date to assess any TFRP. For example, if 2015 payroll taxes for the second quarter of that tax year were not paid but the related Form 941s were filed by the due date of July 31, 2015, IRS would have until July 31, 2018 to assert TFRP *via* Letter 1153(DO).

Statute of Limitations Issues Related to Foreign Source Income

As if there were not enough exceptions to the usual three-year statute of limitations on assessments, taxpayers with foreign-source income and foreign accounts must consider an additional layer of complexity. On March 18, 2010, President Obama signed the Hiring Incentives to Restore Employment Act ("HIRE Act"), which amends the Code by extending certain SOL rules to certain IRS forms.[21]

The provisions of the HIRE Act are generally effective as to tax returns filed after March 18, 2010, and as to tax returns filed before such date if the statute of limitations had not expired as of such date. Prior to amendment by the HIRE Act, Code Sec. 6501(c)(8) provided an extended SOL to assess tax related to any event or period for which certain foreign financial information was not reported. The Hire Act broadened the number and the types of forms that became subject to the extended SOL.[22] Furthermore it broadened the scope of the extended SOL.

If these forms are not timely filed, the time for assessment of any tax does not expire until three years after the date on which the information required is provided to the IRS. Prior to the Act, the SOL only remained open "with respect to any event or period to which such information relates." As amended by the HIRE Act, however, the SOL remains open "with respect to any tax return, event, or period to which such information relates." In other words, the SOL is extended for the *entire* tax return, including items wholly unrelated to foreign assets or transactions. The new SOL extension rule is applicable not only in the case of nonfiling of the appropriate form but also in cases of incomplete filings of an appropriate form.

If, however, the taxpayer is able to show the failure to file the required foreign information reporting form was due to reasonable cause and not willful neglect, the extended SOL only applies to the item or items that should have been reported on the foreign information reporting form and would not apply to the entire tax return.[23]

The HIRE Act also added a new subsection to the Code.[24] Under this new subsection, all U.S. persons who are shareholders of a Passive Foreign Investment Company (PFIC) are required to report their ownership on Form 8621 even where there is no other requirement to file Form 8621 (*e.g.*, receipt of an excess distribution, election for the qualified electing fund (QEF) or election for mark-to-market.)

Although the new subsection was effective as of March 18, 2010, the IRS suspended filing requirement for 2010.[25] The IRS further suspended this filing requirement until regulations and a revised Form 8621 were issued to reflect the reporting requirements of Code Sec. 1298(f).[26]

As discussed earlier, the HIRE Act amended Code Sec. 6501(c)(8) to provide that a failure to file Form 8938 and report foreign financial assets extends the SOL for three years from the date such information is reported to the IRS. In addition to that rule, Code Sec. 6501(e)(1)(A)(ii) was amended to provide that if a taxpayer omits or fails to report more than $5,000 of gross income attributable to a "specified foreign financial asset" (as defined in Code Sec. 6038D), a six-year SOL applies to the entire tax return.

Specified foreign financial assets reportable on Form 8938 include foreign financial accounts (*e.g.*, bank accounts and securities accounts). Other specified foreign financial assets are assets that are held for investment and not held in a financial account and include:

1. stock or securities issued by someone who is not a U.S. person (*e.g.*, stock in a closely held corporation);
2. any interest in a foreign entity (*e.g.,* a capital or profits interest in a foreign partnership);
3. any financial instrument or contract that has an issuer or counterparty that is not a U.S. person (*e.g.,* a note, bond, debenture or other form of indebtedness issued by a foreign person); and
4. an interest in a foreign trust or estate.

For purposes of the six-year SOL, the filing thresholds (*e.g.*, $50,000/$75,000 for single taxpayer; $100,000/$150,000 for joint taxpayers) for Form 8938 are not taken into consideration. Thus, a taxpayer may not be required to file Form 8938 but could still be subject to an extended SOL under Code Sec. 6501(e). Furthermore, at this point in time, only individuals are required to file Form 8938. Partnerships, corporations and trusts are not currently required to file. Nevertheless, an entity that fails to report more than $5,000 of gross income from a specified foreign financial asset will be subject to the six-year SOL.

Effective Date Rules

Applying the March 18, 2010, effective date of the HIRE Act changes can cast a longer shadow than might be expected. A few hypotheticals will illustrate the point:

- A taxpayer failed to report $6,000 of interest income from a foreign bank account that was earned in 2006. The taxpayer timely filed his 2006 tax return on or before April 15, 2007. Since the three-year SOL had not otherwise expired on March 18, 2010, it will not expire before April 15, 2013.
- A taxpayer failed to report $6,000 of interest income that was earned in 2005 from a foreign bank account. Taxpayer timely filed his 2005 tax return on or before April 15, 2006. On December 31, 2008, the taxpayer consents to extend the SOL on assessment to April 15, 2010. Since the extended SOL had not expired on March 18, 2010, it will not expire before April 15, 2012.
- During 2011, a taxpayer held $200,000 in a noninterest-bearing checking account in Canada. In addition, he held a securities account in Taiwan with $10,000 that generated $1,000 in dividends. He reported all of the income and filed Form 8938 but failed to include information regarding the Taiwanese account. On May 15, 2015, he files an amended return disclosing the Taiwanese account. Result? The SOL for *all* items on the tax return will not expire until May 15, 2018, or *three years* after an amended tax return is filed.

Extension of Statute of Limitations Based upon John Doe Summons

A John Doe Summons is an IRS summons authorized by Code Sec. 7609(f). Unlike other IRS summonses, it does

not list the name of the taxpayer under investigation because the taxpayer is not known to the IRS. Code Sec. 7609(e)(2) suspends the SOL for assessment under Code Sec. 6501 for the class of persons described in the John Doe summons on the six month anniversary of service of the summons until final resolution of response or a withdrawal of the summons.

John Doe summonses outstanding for more than six months include:

- UBS
- Stanford International Bank and related entities
- HSBC India
- Jenkins and Gilchrist

In addition, on September 16, 2015, a U.S. District Court in Miami entered an order authorizing the IRS to serve a John Doe summons seeking information about U.S. taxpayers who may hold offshore accounts at Belize Bank International Limited (BBIL) or Belize Bank Limited (BBL). The District Court granted the U.S. government's petition for permission to seek records of BBIL's and BBL's correspondent accounts at Bank of America, N.A., and Citibank, N.A.

Statute of Limitations on the Penalties for Failure to File FINCEN Form 114 (FBAR)

The SOL for the IRS to assess the FBAR penalty is six years from the due date of the return.[27] This rule applies even where no FBAR was filed. The SOL remains the same even if the failure to file the FBAR was due to fraud. Once assessed, the IRS has two years from the date of assessment to bring an action to recover an unpaid penalty.[28]

Final Practice Tips

- Consider late filing of foreign information reporting forms to start the SOL running, especially if there are domestic issues which may be problematic. If the failure to file is nonwillful, then the IRS' Streamlined Filing Procedure is available and would result in a penalty of only five percent of the offshore account balance.
- If the failure to file the Foreign Information Reporting Forms was due to reasonable cause, the IRS Delinquent International Information Return Submission Procedures should be considered. Under this program, no penalty would be imposed.
- Consider a Quiet Voluntary Disclosure, which is better than no disclosure at all. Doing so will stop the running of the SOL, and the filing of an amended return prior to IRS contact may be a "qualified amended return," which insulates the taxpayer from accuracy-related penalties under Code Sec. 6662. This is not a trivial matter since a penalty for any "undisclosed foreign financial asset understatement" is *40 percent* of the amount of the understatement.[29]

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ENDNOTES

1 *See Bishop*, CA-3, No. 13-3100, 2014 BL 175657 (June 24, 2014).

2 *See* Reg. §301.6203-1. The recording document today is RACS Report 006 generated by computer.

3 Code Sec. 6501(a).

4 Code Sec. 7502.

5 *Natalie Holdings Ltd.,* DC-TX, 91 A.F.T.R.2d 2003-616 (2003).

6 *See* Notice 2015-38, IRB 2015-21.

7 *R.D. Beard*, 82 TC 766, 777, Dec. 41,237 (1984), *aff'd per curiam*, CA-6, 86-2 USTC ¶9496, 793 F2d 139.

8 Code Sec. 6501(c).

9 In *W.C. Piarulle*, 80 TC 1035, Dec. 40,130 (1983), the taxpayers signed a Form 872 which was filled out by the IRS extending the SOL for the years 1974, 1975 and 1977. IRS later crossed out the year 1977. The court held that there was no manifestation of mutual consent and no written agreement for purposes of extending the SOL under Code Sec. 6501(c)(4).

10 Code Sec. 6501(c)(1).

11 *E. Badaracco, Sr.*, SCt, 84-1 USTC ¶9150, 464 US 386, 104 SCt 756.

12 Code Sec. 6501(e).

13 In *Colony, Inc.*, SCt, 58-2 USTC ¶9593, 357 US 28, 78 SCt 1033, the Supreme Court established the basic test to be followed:

The six-year rule did not apply to situations where the taxpayer understated its profits as a result of an error in calculating the basis of its property sold. The purpose of the extended period of time was to provide the IRS the ability to detect errors that were not apparent from the face of the return. The Court established a disclosure exception: if the return on its face provides no clue as to the existence of the omitted item, the 25% omission rule would apply. This exception did not apply to overstatement of basis until a new section was signed into law in 2015.

In *Home Concrete & Supply, LLC*, SCt, 2012-1 USTC ¶50,315, 132 SCt 71, the Supreme Court found that an overstatement of basis is not an omission of gross income, meaning that the statute of limitations does not increase when the taxpayer overstates an asset's basis, even though gross income is reduced. The decision emphasized a distinction between an overstatement of basis and an understatement of income. The Court ruled that the six-year SOL did not apply because an overstatement of basis is not an amount omitted from gross income.

The 5–4 decision in *Home Concrete* reaffirmed the Court's 1958 precedent in *Colony Inc.*, SCt, 58-2 USTC ¶9593, 357 US 28, 78 SCt 1033. The Court in *Colony* held that a taxpayer who understates income by more than 25 percent on a tax return because of an overstatement of the basis of property in a sale of the property reported on the return is subject to the normal three-year SOL, not the six-year period under Code Sec. 6501(e)(1)(A) for a substantial omission from gross income.

On July 31, 2015, President Barack Obama signed the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 (H.R. 3236; P.L. 114-41) (the "2015 Act") into law. This act overturned *Home Concrete* by adding a new Code Sec. 6501(e)(1)(B)(ii) providing that "[a]n understatement of gross income by reason of an overstatement of unrecovered cost or other basis is an omission from gross income." As discussed above, adequate disclosure could eliminate the extension of the SOL due to substantial omission of gross income. The 2015 Act amended Code Sec. 6501(e)(1)

by excluding overstatement of basis from the adequate disclosure defense to the imposition of the six-year period.

[14] Code Sec. 6511(a).

[15] A property prepared claim for refund must include all of the following elements: (1) be written; (2) must contain the taxpayer's name, address and identification number; (3) must state facts verified by a written declaration that it is made under the penalty of perjury; (4) with respect to income, gift and federal employment taxes, a separate claim must be made for each tax year or period; (5) the amount of the claim must be stated and a demand for a refund made; (6) the claim must set forth in detail each ground or legal issue upon which the refund is based; and (7) there must be an overpayment in tax for the year(s) at issue.

[16] Exceptions include deductions for a bad debt or for securities becoming worthless—seven years; certain limited equitable situations (known as mitigation of statute); net operating loss carrybacks; credits against estate taxes for foreign estate or death taxes; and when the period of limitations is tolled due to a disability.

[17] To be valid, a protective claim must: (1) be in writing and be signed; (2) include the taxpayer's name, address SSN or ID; (3) identify and describe the contingencies affecting the claim; (4) clearly alert the IRS as to the essential nature of the claim; and (5) identify the specific year(s) for which a refund is sought. A protective claim need not state a specific dollar amount or demand an immediate refund.

[18] Code Sec. 6511(h)(2)(A).

[19] According to Rev. Proc. 99-21, 1999-1 CB 960, to establish "financial disability," a taxpayer must submit a written statement by a physician that includes: the name and a description of the taxpayer's physical or mental impairment; the physician's medical opinion that the physical or mental impairment prevented the taxpayer from managing the taxpayer's financial affairs; the physician's medical opinion that the physical or mental impairment was or can be expected to result in death, or that it has lasted (or can be expected to last) for a continuous period of not less than 12 months; and the specific time period during which the taxpayer was prevented by such physical or mental impairment from managing the taxpayer's financial affairs. Lastly, a certification signed by the physician must be submitted stating: "I hereby certify that, to the best of my knowledge and belief, the above representations are true, correct, and complete."

R. Abston, CA-8, 2012-2 USTC ¶50,541, 691 F3d 992 is an appellate decision addressing Code Sec. 6511(h) and Rev. Proc. 99-21. The district court there held, and the appellate court affirmed, that the failure to submit the physician's statement was fatal to the claim for tolling of the statute of limitations.

[20] 11 USC §§523(a)(1) and 507(a)(8).

[21] The Hiring Incentives to Restore Employment Act ("HIRE Act") of 2010 (P.L. 111-147), 124 Stat. 71, enacted March 18, 2010, H.R. 2847.

[22] The forms include:

1. Form 8621, *Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund*;
2. Form 3520, *Annual Return to Report Transactions with Foreign Trusts and Receipt of Certain Foreign Gifts*. Parts I–III reporting requirements are contained in Code Sec. 6048, regarding transactions with certain foreign trusts by U.S. person, certain foreign trusts with U.S. owners and U.S. beneficiary of foreign trusts;
3. Form 3520-A, *Annual Information Return of Foreign Trust with a U.S. Owner*;
4. Form 8938, *Statement of Specified Foreign Financial Assets*;
5. Form 5471, *Information Return of U.S. Persons with Respect to Certain Foreign Corporations*;
6. Form 8865, *Return of U.S. Persons with Respect to Certain Foreign Partnerships*;
7. Form 8858, *Information Return of U.S. Persons with Respect to Foreign Disregarded Entities*;
8. Form 5472, *Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business*; and
9. Form 926, *Filing Requirement for U.S. Transferors of Property to a Foreign Corporation*. Reporting requirements are contained in Code Sec. 6038B, regarding certain transfers of property to foreign corporations.

[23] Code Sec. 6501(c)(8)(B).

[24] Code Sec. 1298(f).

[25] Notice 2010-34, IRB 2010-17, 612.

[26] Notice 2011-55, IRB 2011-29, 53. Temporary Reg. §1.1298-1T (effective Dec. 31, 2013) provides that all PFIC shareholders must file Form 8621 with their 2013 and later income tax returns and for all subsequent years. However, if the aggregate value of the shareholder's PFIC stock is $25,000 ($50,000 on a joint return) or less on the last day of the shareholder's tax year, and the shareholder is not otherwise required to file Form 8621, then no Form 8621 will be due solely as a result of the ownership of PFICs. Temporary Reg. §1.1298-1T(c)(2).

[27] Code Sec. 5321(b)(1).

[28] Code Sec. 5321(b)(2).

[29] Code Sec. 6662(b)(7). Code Sec. 6662(j)(3), substituting "40 percent" penalty for "20 percent."

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