

TAX FLASH

IRS Issues Guidance for Dual Citizen Americans Living Abroad

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On Monday, December 13th, 2011, the Internal Revenue Service (“IRS”) issued prospective guidance for those US persons (US citizens and green card holders) living outside the US who are not in full compliance with their US tax and foreign bank account (FBAR) filings.

IRS fact sheet FS-2011-13 summarizes information about the general requirements for filing US federal income tax returns and FBAR forms and how to remedy delinquent filings.

Delinquent filers may still be subject to penalties. Those US taxpayers who owe no US tax will not be subject to tax return penalties. However, for the FBAR filings, FBAR penalties may be waived only in the case of a violation that the IRS determines was due to reasonable cause.

In most situations, US taxpayers residing in Canada with no US source income should have no US income tax liability after taking into consideration either the foreign earned income exclusion or after claiming foreign tax credits for Canadian taxes paid. However under the FBAR requirements, reasonable cause takes greater significance.

Reasonable cause relief is generally granted by the IRS when a taxpayer exercised ordinary business care and prudence in meeting their US tax obligations but nevertheless failed to meet them. In determining whether one exercised ordinary business care and prudence, the IRS will consider all available information, including:

- The reasons given for not meeting their tax obligations;
- Their compliance history;
- The length of time between their failure to meet their tax obligations and their subsequent compliance; and
- Circumstances beyond their control.

Reasonable cause may be established if one is able to demonstrate they were not aware of specific obligations to file US returns or pay taxes, depending on the facts and circumstances. The IRS will consider factors such as education level; previous record of penalties; recent changes in either the tax forms or US law that one could not reasonably be expected to know; and the level of complexity of a tax or compliance issue.

Interestingly, the IRS has stated that reasonable cause for noncompliance due to ignorance of the law may be grounds for a reasonable cause defense if a good faith effort was made to comply with the law or one was unaware of the requirement and could not reasonably be expected to know of the requirement to file. Determining what constitutes a “good faith” effort will be highly fact dependent and although the IRS has stated that no one factor is determinative, accountants would be well advised to maintain records of discussions and client communications when dealing with non compliant US tax filers.

If you need assistance with this matter please contact one of our Collins Barrow US tax advisors. §

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