

Foreign Bank and Financial Accounts Reporting ("FBAR") and Amnesty Through August 31, 2011

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The IRS is currently offering an amnesty program through August 31, 2011 for past due reporting regarding offshore accounts. An initial amnesty program closed on October 15, 2009, and many individuals simply did not learn of its availability until it was too late.

The new amnesty program gives all of those who were unable to participate in the first program a second chance to report the existence of foreign financial accounts. Given the risk of criminal prosecution and the harsh penalties imposed if the IRS learns of foreign accounts, there is increased motivation to participate in this program before it expires. The opportunity to avoid criminal prosecution resulting from an undeclared offshore account should serve as a major incentive to participate. Amnesty will also reduce the civil penalties from 50% of the value of the account each year to a single penalty of 25% of the highest value of the account over the past eight years.

On March 28, 2011, the Financial Crimes Enforcement Network, also known as "FINCEN", a division of the U.S. Department of Treasury, finalized regulations for the reporting of a U.S. person's interest in, or signature or other authority over, a financial account that resides in a foreign country. Such accounts are reported on the Internal Revenue Service FBAR report -- Form TD-F 90-22.1 -- by June 30

of each year in which the aggregate value of such accounts exceeded \$10,000 at any time during the preceding year. The final regulations were intended to clarify who must file an FBAR and what foreign accounts are reportable.

For reporting purposes, the definition of U.S. person includes, in addition to any U.S. citizen or resident, any entity created, organized, or formed under the laws of the United States, any state and certain territories of the United States. It also includes any U.S. limited liability company ("LLC"), without regard to whether the LLC actually does business in the United States. A U.S. person also includes trusts formed under the laws of a state of the United States, even if these trusts are foreign trusts for U.S. federal tax purposes. The final regulations now hold that a beneficiary who receives more than 50 percent of a trust's "current" income has a financial interest. The Treasury Department does not intend for a remainder beneficiary or for a beneficiary of a discretionary trust to have a reportable financial interest in the trust merely because of such remainder or discretionary interest.

The final regulations continue to exempt trust beneficiaries from any FBAR reporting requirement on account of the interest in the trust if a U.S. person trustee (or agent) of the trust files an FBAR disclosing the trust's foreign financial accounts and provides additional information as required. However, no exemption is available for beneficiaries of a trust treated as a "grantor" trust under the applicable U.S. federal tax laws where the grantor is a U.S. person otherwise required to file an FBAR disclosing the trust's foreign financial accounts.