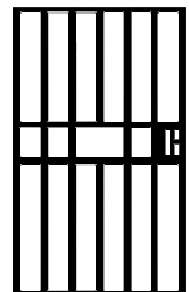




Foreign Checking, Saving, or any other type of account

What You Don't Know Will
Allow The USA to Seize
Your Money -

If you do know, or should have known – but do not report all the foreign assets; you might be doing jail time in a federal prison!





Form 114 Non-filer Penalties

The penalties for not filing the FinCEN Form 114 are harsh.

⌘ A person who is required to file an FBAR and fails to properly file may be subject to a civil penalty not to exceed \$10,000 per violation. If there is reasonable cause for the failure and the balance in the account is properly reported, no penalty will be imposed.

⌘ A person who willfully fails to report an account or account identifying information may be subject to a civil monetary penalty equal to the greater of \$100,000 or 50 percent of the balance in the account at the time of the violation. In addition, there can also be criminal penalties of up to \$250,000 or 5 years in jail or both.

⌘ If a person has willfully failed to report and is engaging in a certain pattern of illegal activity, criminal penalties are increased up to \$500,000 or 10 years in jail or both.

Form 114 Non-filer Penalties

○**Q12. How does the penalty framework work? Can you give us an example?**

○**A12.** Assume the taxpayer has the following amounts in a foreign account over a period of six years. Although the amount on deposit may have been in the account for many years, it is assumed for purposes of the example that it is not unreported income in 2003.

Year	Amount on Deposit	Interest Income	Account Balance
2003	\$1,000,000	\$50,000	\$1,050,000
2004		\$50,000	\$1,100,000
2005		\$50,000	\$1,150,000
2006		\$50,000	\$1,200,000
2007		\$50,000	\$1,250,000
2008		\$50,000	\$1,300,000

(NOTE: This example does not provide for compounded interest, and assumes the taxpayer is in the 35-percent tax bracket, files a return but does not include the foreign account or the interest income on the return, and the maximum applicable penalties are imposed.)

If the taxpayer comes forward and has their voluntary disclosure accepted by the IRS, they face this potential scenario: They would pay \$386,000 plus interest. This includes:


- Tax of \$105,000 (six years at \$17,500) plus interest,
- an accuracy-related penalty of \$21,000 (i.e., \$105,000 x 20%), and
- An additional penalty, in lieu of the FBAR and other potential penalties that may apply, of \$260,000 (i.e., \$1,300,000 x 20%).

If the taxpayer didn't come forward and the IRS discovered their offshore activities, they face up to \$2,306,000 in tax, accuracy-related penalty, and FBAR penalty. The taxpayer would also be liable for interest and possibly additional penalties, and an examination could lead to criminal prosecution.

The civil liabilities potentially include:

The tax and accuracy-related penalty, plus interest, as described above,

FBAR penalties totaling up to \$2,175,000 for willful failures to file complete and correct FBARs (2003- \$100,000, 2004 - \$100,000, 2005 - \$100,000, 2006 - \$600,000, 2007 - \$625,000 and 2008 - \$650,000),



The potential of having the fraud penalty (75 percent) apply, and

The potential of substantial additional information return penalties if the foreign account or assets is held through a foreign entity such as a trust or corporation and required information returns were not filed. Note that if the foreign activity started more than six years ago, the Service may also have the right to examine additional years.

Form 114 Non-filer Penalties

Q12. How does the penalty framework work? Can you give us an example?

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Year	Amount on Deposit	Interest	Income	Account
Balance 2003	\$1,000,000	\$50,000	\$1,050,000	2004
2005	\$50,000	\$1,150,000	2006	\$50,000
2006	\$50,000	\$1,200,000	2007	\$50,000
2007	\$50,000	\$1,250,000	2008	\$50,000
2008	\$50,000	\$1,300,000		

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Form 114 Non-filer Penalties

- The potential of having the fraud penalty (75 percent) apply, and
- The potential of substantial additional information return penalties if the foreign account or assets is held through a foreign entity such as a trust or corporation and required information returns were not filed.
- Note that if the foreign activity started more than six years ago, the Service may also have the right to examine additional years.
- Q13. What years are included in the 6-year period?**
- A13. A taxpayer is expected to file correct delinquent or amended tax returns for tax year 2008 back to 2003.
- Q14. What are some of the criminal charges I might face if I don't come in under voluntary disclosure and the IRS finds me?**
- A14. Possible criminal charges related to tax returns include tax evasion (26 U.S.C. § 7201), filing a false return (26 U.S.C. § 7206(1)) and failure to file an income tax return (26 U.S.C. § 7203). The failure to file an FBAR and the filing of a false FBAR are both violations that are subject to criminal penalties under 31 U.S.C. § 5322.
- A person convicted of tax evasion is subject to a prison term of up to five years and a fine of up to \$250,000. Filing a false return subjects a person to a prison term of up to three years and a fine of up to \$250,000. A person who fails to file a tax return is subject to a prison term of up to one year and a fine of up to \$100,000. Failing to file an FBAR subjects a person to a prison term of up to ten years and criminal penalties of up to \$500,000.
- Q15. What are some of the civil penalties that might apply if I don't come in under voluntary disclosure and the IRS finds me? How do they work?**
- A15. The following is a summary of potential reporting requirements and civil penalties that could apply to a taxpayer, depending on his or her particular facts and circumstances.
- A penalty for failing to file the Form TD F 90-22.1 (Report of Foreign Bank and Financial Accounts, commonly known as an "FBAR"). United States citizens, residents and certain other persons must annually report their direct or indirect financial interest in, or signature authority (or other authority that is comparable to signature authority) over, a financial account that is maintained with a financial institution located in a foreign country if, for any calendar year, the aggregate value of all foreign accounts exceeded \$10,000 at any time during the year. Generally, the civil penalty for willfully failing to file an FBAR can be as high as the greater of \$100,000 or 50 percent of the total balance of the foreign account. See 31 U.S.C. § 5321(a)(5). Nonwillful violations are subject to a civil penalty of not more than \$10,000.

Form 114 Non-filer Penalties

- The potential of having the fraud penalty (75 percent) apply, and
- A penalty for failing to file Form 3520, Annual Return to Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts. Taxpayers must also report various transactions involving foreign trusts, including creation of a foreign trust by a United States person, transfers of property from a United States person to a foreign trust and receipt of distributions from foreign trusts under section 6048. This return also reports the receipt of gifts from foreign entities under section 6039F. The penalty for failing to file each one of these information returns, or for filing an incomplete return, is 35 percent of the gross reportable amount, except for returns reporting gifts, where the penalty is five percent of the gift per month, up to a maximum penalty of 25 percent of the gift.
- A penalty for failing to file Form 3520-A, Information Return of Foreign Trust With a U.S. Owner. Taxpayers must also report ownership interests in foreign trusts, by United States persons with various interests in and powers over those trusts under section 6048(b). The penalty for failing to file each one of these information returns or for filing an incomplete return, is five percent of the gross value of trust assets determined to be owned by the United States person.
- A penalty for failing to file Form 5471, Information Return of U.S. Person with Respect to Certain Foreign Corporations. Certain United States persons who are officers, directors or shareholders in certain foreign corporations (including International Business Corporations) are required to report information under sections 6035, 6038 and 6046. The penalty for failing to file each one of these information returns is \$10,000, with an additional \$10,000 added for each month the failure continues beginning 90 days after the taxpayer is notified of the delinquency, up to a maximum of \$50,000 per return.
- A penalty for failing to file Form 5472, Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business. Taxpayers may be required to report transactions between a 25 percent foreign-owned domestic corporation or a foreign corporation engaged in a trade or business in the United States and a related party as required by sections 6038A and 6038C. The penalty for failing to file each one of these information returns, or to keep certain records regarding reportable transactions, is \$10,000, with an additional \$10,000 added for each month the failure continues beginning 90 days after the taxpayer is notified of the delinquency, up to a maximum of \$50,000 per return.

Form 114 Non-filer Penalties

○A penalty for failing to file Form 926, Return by a U.S. Transferor of Property to a Foreign Corporation. Taxpayers are required to report transfers of property to foreign corporations and other information under section 6038B. The penalty for failing to file each one of these information returns is ten percent of the value of the property transferred, up to a maximum of \$100,000 per return, with no limit if the failure to report the transfer was intentional.

○A penalty for failing to file Form 8865, Return of U.S. Persons With Respect to Certain Foreign Partnerships. United States persons with certain interests in foreign partnerships use this form to report interests in and transactions of the foreign partnerships, transfers of property to the foreign partnerships, and acquisitions, dispositions and changes in foreign partnership interests under sections 6038, 6038B, and 6046A. Penalties include \$10,000 for failure to file each return, with an additional \$10,000 added for each month the failure continues beginning 90 days after the taxpayer is notified of the delinquency, up to a maximum of \$50,000 per return, and ten percent of the value of any transferred property that is not reported, subject to a \$100,000 limit.

○Fraud penalties imposed under sections 6651(f) or 6663. Where an underpayment of tax, or a failure to file a tax return, is due to fraud, the taxpayer is liable for penalties that, although calculated differently, essentially amount to 75 percent of the unpaid tax.

○A penalty for failing to file a tax return imposed under section 6651(a)(1). Generally, taxpayers are required to file income tax returns. If a taxpayer fails to do so, a penalty of 5 percent of the balance due, plus an additional 5 percent for each month or fraction thereof during which the failure continues may be imposed. The penalty shall not exceed 25 percent.

○A penalty for failing to pay the amount of tax shown on the return under section 6651(a)(2). If a taxpayer fails to pay the amount of tax shown on the return, he or she may be liable for a penalty of .5 percent of the amount of tax shown on the return, plus an additional .5 percent for each additional month or fraction thereof that the amount remains unpaid, not exceeding 25 percent.

○An accuracy-related penalty on underpayments imposed under section 6662. Depending upon which component of the accuracy-related penalty is applicable, a taxpayer may be liable for a 20 percent or 40 percent penalty.