

IRS Extends Deadline for Foreign Bank Account Reporting (FBAR) on Certain Foreign Accounts

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In Notice 2009-62, released on August 7, 2009, the IRS said US taxpayers will not have to file the FBAR form until June 30, 2010 if (i) they have signature authority over, but no financial interest in, a foreign financial account and (ii) taxpayers who have a financial interest in, or signature authority over, a foreign comingled fund. The new extended deadline applies for FBARs for the 2008 and earlier calendar years.

The new limited extension came as the original extended FBAR filing deadline of September 23, 2009 approaches. The extension appears to be in response to numerous questions and critical issues raised in recent weeks regarding the treatment of individuals with signature authority over foreign accounts as well as those involved in foreign hedge funds and similar foreign investment accounts. The recently revised instructions to the FBAR provide, with certain exceptions, that US persons who had signature authority over, but no financial interest in, a foreign financial account are required to file an FBAR. These persons must report the account on an FBAR even if the foreign financial account is reported on an FBAR filed by the owner of the foreign account.

The current instructions also provide that a foreign financial account that must be reported on an FBAR includes any bank, securities, securities derivatives, or other financial instruments account. The instructions further provide that these accounts "generally also encompass any accounts in which the assets are held in a comingled fund and the account owner owns an equity interest in the fund (including mutual funds)."

FBARs generally must be filed with the Department of the Treasury on or before June 30 of the succeeding year. The relief granted in the current notice applies for the 2008 calendar year as well as prior years with respect to only these foreign financial accounts. For FBAR filing not covered by this limited extension, such as where a US person has a financial interest in a foreign financial account other than a comingled fund, the extended deadline of September 23, 2009 remains applicable. The IRS has also indicated that it is seeking comments on many of the critical issues recently raised concerning the revised instructions. It is expected that additional guidance may be issued in the future concerning these foreign financial accounts and the FBAR filing requirements.