

Welcome

Tatiya Accountax Inc

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Tatiya Accountax Inc.

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About us

- New York State Licensed Public Accountants
- Hemant Jain CA, CS, CPA
- Neetu Jain CA, CWA, CPA

Tel: (516) 742-4145

Services

Tax Services

- Income tax returns.... individuals, partnerships, LLCs, corporations, trusts, amended returnsefiling
- Payroll & sales tax preparation
- Gift tax preparation
- Tax planning
- Representation in tax audits & notices
- FBAR compliance
- Other tax related services – registration with tax depts., obtaining tax transcripts, ITINs etc.

Serving all the 50 states of USA



Services contd.....

Auditing & Accounting Services

- Compilations, reviews and audits
- Accounting & book-keeping
- Periodical financial statements
- Accounting software solutions including quickbooks for your home or business

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Services contd.....

Retirement Planning

- IRA – Traditional vs Roth
- 401k
- Defined contribution
- Defined Benefit

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Services contd.....

Other services:

- Incorporations
- Assistance with banking relations – loans, mortgages, lines of credit etc.
- Advisory services – form a corp. or LLC, buy a business, real estate, buy/lease a vehicle
- Issues – employees on student visa, H-1 employees with spouses out of USA, offshore payments for outsourced services, multi-state operations, reports for INS etc.
- More issues.....we can help

Tel: (516) 742-4145

Our strengths

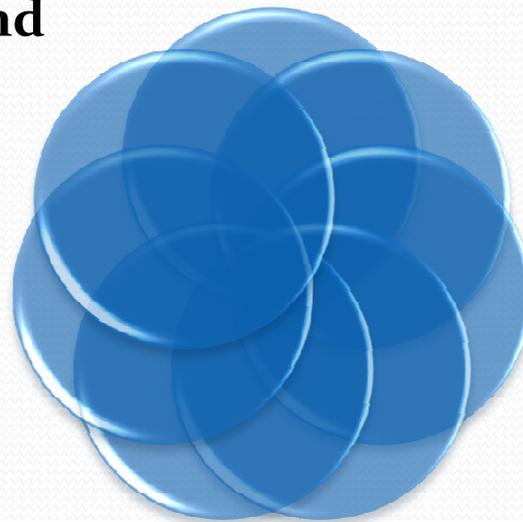
**Technical
Expertise**

**Confidentiality and
Integrity**

**Professional
Commitment**

**Courteous and
Timely Services**

**Personalized
Services**



**English, Hindi, Telugu
and Gujarati**

**Weekends
and Evenings**

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FBAR TIME

TATIYA ACCOUNTAX INC

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Reporting Foreign Financial Accounts on the FBAR Hemant Jain CPA

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The information contained in this presentation is current as of June 1, 2011. It should not be considered official guidance.



FBAR Background

Bank Secrecy Act enacted in 1970

- Codified primarily in Title 31 of U.S. Code

- Requires reporting of Foreign Financial Accounts

- Severe civil and criminal penalties for failure to comply



FBAR Filing Basics

Four Elements of FBAR Filing

- “United States Persons” must file if
- They have a financial interest or signature authority over
- A Foreign Financial Account(s), and
- The aggregate value of the account(s) exceeds \$10,000 at any time during the calendar year.



FBAR Filing: “U.S. Persons”

“U.S. Persons” means

- U.S. citizens (no matter where they reside)
- U.S. residents -IRC 7701(b)
- U.S. entities – any entity created or organized in U.S. or under U.S. law. Tax status disregarded.



FBAR Filing: “U.S. Residents”

- “U.S. Resident” determined under IRC 7701(b)
- Green Card and Substantial Presence tests
- Those who elect to be treated as residents under 7701(b) file FBARs only on accounts held during the election period
- Tax treaty or IRC 6013(g) or (h) elections disregarded for FBAR purposes

FBAR Filing: “Financial Interest”

“Financial Interest” means:

- U.S. person is record owner or holds title directly
- Someone else holds title for benefit of U.S. person
- U.S. person is record owner or holds title indirectly
 - U.S. person owns >50% of the entity that holds title



FBAR Filing: “Signature Authority”

“Signature Authority” means:

- Individual(s) can control disposition of account assets
 - Can be in conjunction with another
- By direct communication (oral or written)

Signature Authority is not:

- Supervisory approvals
- Attributed to entities



FBAR Filing: “Foreign”

“Foreign”

- Outside the “United States,” which is: –States –D.C.

Territories and Possessions

Indian lands

- Physical location of account governs



FBAR Filing: “Financial”

“Financial”

- Both monetary and non-monetary assets
- Bank, brokerage, and investment accounts; insurance and annuity policy cash values; and mutual funds are specifically named
- Generally not real and personal property



FBAR Filing: “Account”

“Account”

- Relationship with financial institution or person acting as a financial institution
- Not assets directly held



FBAR Filing: “Aggregation”

“Aggregate Value Exceeds \$10,000”

- Aggregate accounts with financial interest and those with signature authority
- Aggregate accounts owned “directly” and those owned “indirectly”



Reportable Accounts

- Bank accounts (checking, savings, CDs)
- Securities or brokerage accounts (buying, selling, holding or trading stocks, bonds, etc.)
- Other financial accounts
 - Other deposit accounts
 - Cash value of insurance or annuities
 - Commodity futures or options accounts
 - Mutual funds, or similar pooled funds



Mutual Fund Definition

“Mutual Fund” is defined as:

- Issues shares to the general public
- Shares have a regular net asset value determination, and
- Regular redemptions



Reportable Account Exceptions

- U.S. military banking facility
- Accounts of U.S. governmental entities
- International financial institutions
- Correspondent or “nostro” accounts



Custodial Accounts

- **“Omnibus” foreign accounts held by U.S. banks or other financial institutions to hold investments of multiple persons**

- If U.S. Person can only access account through U.S. entity and cannot directly access the foreign account, no FBAR reporting is required.



Valuing Accounts for FBAR

- Each account valued separately at its highest value
- Periodic statements may be relied upon
- Value in local currency is converted to
- U.S. dollars at 12/31 rate.
- Aggregate all accounts
- Do not double-count for determining threshold



Example 1

- Bank A account = \$8,000 (Move entire amount to new account) Bank B account = \$8,000 Total accounts are \$16,000
- However, not over \$10,000 at a given time during the year. Therefore: Filing not required.



Example 2

- Bank A account = \$8,000
- Bank C account = \$4,000
(move Bank A account to new Bank B account)
- Bank B account = \$8,000

- Now accounts exceed \$10,000 Filing required



Trust Beneficiary Exceptions

- Trust beneficiary does not need to file if trust, trustee or agent is a U.S. person and files an FBAR disclosing the trust's foreign financial accounts



Special Filing Rules

Truncated filing for 25 or more accounts

- Financial interest filers

Check box 14 “yes” and provide number of accounts

No account detail required (maintain records)

- Signature authority filers

Check box 14 “no”

Provide account owner’s information in Part IV (items 34-43)



Special Filing Rules (2)

Consolidated Filing (Part V)

Allowed for all types of entities

All U.S. Persons in consolidated group required to file should be shown



Special Filing Rules (3)

Spousal Filing

- Spouses allowed to file one combined FBAR if:
 - Second (non-filing) spouse has only joint accounts with first (filing) spouse
 - All joint accounts reported on single FBAR
 - Both spouses sign in item 44



FBAR Record Keeping Requirements

- Account records must be maintained for five years
- Exception: officers or employees who file an FBAR because of signature authority over the foreign financial account of their employers are not expected to personally maintain the records of these foreign financial accounts.



Question 1

How do I file an amended FBAR?

- Check the “Amended” box in the upper right-hand corner of the FBAR on page 1
- Enter your additions and corrections, and
- Staple the amended and copy of the original return together prior to filing



Question 2

How is a Certificate of Deposit account reported when it acquires a new account number upon each renewal?

The issuance of a new certificate with a new account number upon each renewal, by itself, is not treated as a transfer of funds to a new financial account for FBAR purposes. The funds are considered to be deposited in only one financial account, a CD with the bank.



Question 3

Do I need to file an FBAR for my infant son who is a U.S. citizen and has foreign financial accounts, but is not required to file a tax return?

Yes. There are no age limitations on FBAR filing. An FBAR should be filed on behalf of your son if he has reportable foreign financial accounts. Tax filing status is not a consideration for FBAR.



Question 4

An individual has the power to direct how an account is invested, but cannot make dispositions from the account. Is that individual required to file the FBAR?

No. The FBAR is not required because the person who cannot make dispositions from an account is not considered to have signature authority over the account.



Question 5

Is the FBAR required by a U.S. resident with power of attorney over his parents' reportable financial accounts in Canada, even when that authority has never been exercised?

Yes. The person holding power of attorney is a U.S. person who is required to file FBARs on the reportable accounts, as long as the authorization remains in force. Whether that authority has ever been exercised is not relevant to the FBAR filing requirement.



Question 6

Is an account holding certificates representing an interest in gold bullion considered a reportable account?

Yes. An account with a financial institution, located in a foreign country, is a reportable account, whether the account holds cash or non-monetary assets.



Question 7

What are some of the civil penalties that might apply if the IRS examines me?

- Accuracy-related penalties, fraud penalties, the failure to file and failure to pay penalties, plus interest



- Willful violations - as high as the greater of \$100,000 or 50 percent of the total balance of the foreign account per violation

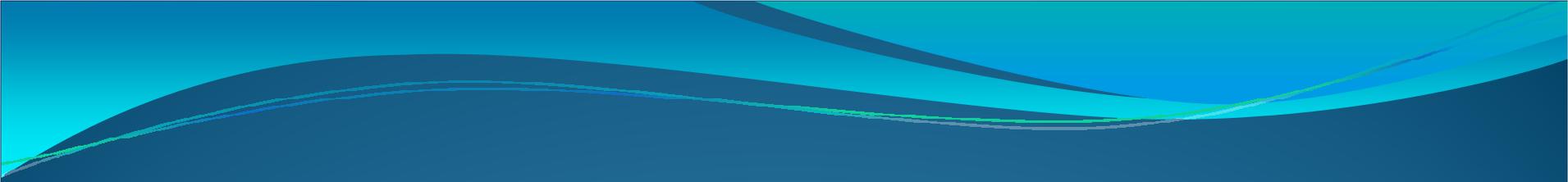
- Non-willful violations - upto \$10,000 penalty per violation



Question 8

What are some of the criminal charges I might face if the IRS examines me?

- Tax evasion is subject to a prison term of up to five years and a fine of up to \$250,000.
- 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.



OVDI

Offshore Voluntary
Disclosure Initiative

2011



Period covered

2003-2010

Penalty framework under the 2011 OVDI

- Pay 20% accuracy-related penalties, failure to file penalties, failure to pay penalties as applicable
- Pay a penalty, equal to 25% (or in limited cases 12.5% or 5%) of the highest aggregate balance in foreign bank accounts/entities and value of foreign assets during the period covered by the voluntary disclosure



Reduced 12.5% penalty

- Taxpayers whose highest aggregate account balance including the fair market value of assets in undisclosed offshore entities and the fair market value of any foreign assets that were either acquired with improperly untaxed funds or produced improperly untaxed income in each of the years covered by the 2011 OVDI is less than \$75,000 will qualify for a 12.5 percent offshore penalty.



Reduced 5% penalty

In very limited situations,

- I. Meets all of the following:
 - Inherited account
 - Minimal infrequent contact
 - Not withdrawn more than \$1,000 except to close and transfer to US.
 - Did not open account with untaxed funds (must establish that funds were taxed going back as far as 1991).



Reduced 5% penalty contd..

- II. Taxpayers who are foreign residents and who were unaware they were U.S. citizens.
- III. Taxpayers who are foreign residents and who meet all three of the following conditions for all of the years of their voluntary disclosure:
 - (a) taxpayer resides in a foreign country; (b) taxpayer has made a good faith showing that he or she has timely complied with all tax reporting and payment requirements in the country of residency; and (c) taxpayer has \$10,000 or less of U.S. source income each year.

What kinds of assets does the 25 % offshore penalty apply to?

All of the taxpayer's offshore holdings that are related in any way to tax non-compliance, regardless of the form of the taxpayer's ownership or the character of the asset including

- financial accounts holding cash
- securities or other custodial assets
- tangible assets such as real estate or art
- intangible assets such as patents or stock or other interests in a U.S. or foreign business etc...

Thank you

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