

Terry Ralph M

From: Norman Reuter [n.reuter@libertysurf.fr]
Sent: Tuesday, December 28, 2010 1:00 PM
To: Terry Ralph M
Subject: comments on burdens imposed by Form 8938 - Continued

To Mr. Ralph M. Terry
For transmission to Mr. Gerald Shields

Dear Mr Terry,

This e-mail is a follow-up to my e-mail of yesterday evening (below).

I am sending you this e-mail in lieu of sending a paper copy, as discussed by telephone yesterday. Thank you for your kind offer to transmit before the January 3 deadline my comments on the burdens imposed by Form 8938.

The below e-mail was sent last night your time, in the wee hours of the morning Paris time, and I was not able to type a conclusion. I wish to do so now. Also, I wish to clarify a couple of the points made in last night's below e-mail.

1/19/2011

I sincerely hope that solutions to the electronic filing issues enumerated below will or have already been implemented. Those solutions must permit the declaration of a significant number of foreign assets. By significant, I would say at least 40 foreign bank accounts in Part A of Form 8938 and innumerable, hundreds, of individual securities in Part B.

As for Part C of Form 8938, I cannot comment because I do not have much experience with unusual investment vehicles and am not even sure what you are looking for except perhaps someone who sells on an installment plan, which I have never seen in France. I would still provide ample space so as not to infringe on electronic filing.

As for Part D, you certainly need more than two lines. I have several clients who have multiple Forms 5471 and 8865. To be on the safe side, I would allow for between 5 and 10 closely held entities per taxpayer.

I will be contacting my software developer as soon as I have confirmation from you that electronic filing will be permitted. I would appreciate that you contact all software developers and **emphasize** the importance of enhancing their software to allow electronic filing of Form 8938 for U.S. taxpayers with significant holdings overseas as indicated above. This is extremely important as the greatest obstacle to electronic filing from overseas today is the software developers.

Lastly, in regard to electronic filing, I wish to emphasize what I said and indicated below concerning the work I did to help bring about viable electronic filing from overseas.

This involved months of time over the years 2000 through 2004, time for which I was paid nothing. After the IRS's promotion of electronic filing, the investment of time I have made, and the importance of electronic filing to me today, I trust that the IRS will not let me down.

I regard to the burdens imposed on taxpayers and tax return preparers as indicated below, I wish to emphasize that the estimated completion time as indicated (one hour and five minutes) is **completely unrealistic**. For the long term overseas community of Americans with most or all of their assets overseas, think more in terms of doubling or tripling the time for annual tax return preparation. And overseas tax returns are complicated. The average tax return that I do takes a day. Some take less and some take more. So the average tax return with Form 8938 could take two days. This will require a significant adjustment to how I run my practice, and what I charge for a tax return.

Why was such an unrealistic completion time proposed, even at this stage for the draft form? I can only presume that the employee responsible for this glitch was trying to please his superiors. I sincerely hope that the IRS will have the courage to correct this administrative reflex so that in the end you will not simply be **dumping on me**.

As I mentioned below, this lack of realism does not help compliance efforts on your part, or on my part. Particularly on my part, as I am your compliance man in the field. I am the one who has direct contact with each taxpayer every year. I have to explain this new requirement to taxpayers, my clients, and sell them the importance of complying, of doing it right and doing it well. How am I supposed to do this if you are telling them that it should take one hour and I know from experience that it will take eight hours? How will

they feel about paying me for the extra time now that you have planted doubts in their minds? Will they go to another preparer who has less qualms about doing it right and doing it well? This last is rather easy. How do you prove "knew or should have known" against a preparer, especially when we are dealing with foreign assets in a foreign culture in which IRS personnel are pretty much helpless.

Generally, I find the Form 8938 redundant and ineffective as well as being extremely burdensome (as I mentioned below, it will be like having to do an estate tax return every year along with your income tax return). It is redundant because you already have the foreign bank account form (the TD F 90-22.1), and Forms 5471, 8865, 6252 and 3520. It is ineffective because people who are cheating or terrorists are simply not going to file it, the same way they already don't file anything. And in that way, it is unfair because it just puts a significantly greater burden on those who are already complying.

But if Congress mandated it, then I guess we're stuck with it, and as mentioned above, it will mean a significant change in the way overseas return preparers organize their practice. I will be immensely grateful if you take into account my comments. I will also be grateful if you let me know at this time your plans vis-a-vis electronic filing with Form 8938.

With my very best regards,

Norman Reuter

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1/19/2011

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----- Original Message -----

From: [Norman Reuter](#)

To: Ralph.M.Terry@irs.gov

Sent: Tuesday, December 28, 2010 3:08 AM

Subject: comments on burdens imposed by Form 8938

To Mr. Ralph M. Terry
For transmission to Mr. Gerald Shields

Dear Mr Terry,

I am sending you this e-mail in lieu of sending a paper copy, as discussed by telephone earlier today. Thank you for your kind offer to transmit before the January 3 deadline my comments on the burdens imposed by Form 8938.

1/19/2011

I am a tax return preparer in Paris France. I have been working as such for over 20 years, serving the middle and lower income American community in France. I am an attorney (California and Paris bars) with an LLM (tax). I became a tax return preparer because I wanted to stay in Paris, and tax return preparation was the niche available. I have my own firm since November 1992.

I see considerable burdens associated with Form 8938, both from the point of view of the taxpayer, and also from the point of view of the tax return preparer.

Almost all my clients are U.S. citizens and long term residents of France. Many are married to French spouses. Their lives are here, and consequently, they have many bank accounts here where they live. This is aggravated by the fact that French banks tend to be very aggressive, and prompt one to open as many different accounts as possible. One who is not well versed in money matters and lends their confidence to a French banker, generally ends up with a dozen (or dozens) of accounts, many of which the client does not truly understand their functioning.

I have experience declaring assets in two contexts, one being the foreign bank account form, i.e., the U.S. Treasury Form TD F 90-22.1, and the other being French wealth tax returns. I also do estate tax returns from time to time.

Before January 1, 2009, the Form TD F 90-22.1 had a very broad check the box line as to the value of each account: under \$10 000, \$10 000 to \$100 000, \$100 000 to one million, etc. After December 31, 2008, the form has required the exact highest amount in each account during the year. For many people, this has turned what was originally an hour or two compliance requirement into something which could take more than a day,

searching for and then through monthly statements for more than a dozen accounts, calling the bank for missing information, etc.

On a French wealth tax return, one basically must list assets in detail, with account numbers for bank accounts, values at the end of the year, etc. In principle, one must list each security held in securities accounts, similar to the requirement in Part B of Form 8938. I know from experience that this is extremely time consuming, and generally I ask the clients to do it themselves if possible. It will of course be more time consuming if the taxpayer must list not simply the asset values at the end of the year, but the maximum values at any time during the year.

It is evident from the form that taxpayers must declare assets other than bank and financial accounts at foreign institutions. For example, Part D requires declaration of interests in foreign entities. The estimated time given for preparation of Form 8938 is one hour and five minutes. How is one supposed to declare all the above details about holdings in foreign financial institutions and evaluate a closely held business in one hour and five minutes?

I understand the problems Congress and the IRS face concerning compliance. On top of that, I am a patriot and my country is at war. That being said, to anticipate that the detailed declaration of one's assets (my clients are long term residents with their assets over here) will take one hour and five minutes shows a draconian disregard and disrespect. It does not help compliance efforts on your part or on my part, and it was absolutely unnecessary. The IRS has experience in this regard concerning estate tax returns and the time it takes to prepare them accurately.

As for the tax return preparer, I have a number of questions. Since Form 8938 must be attached to the income tax return, what will be my level of responsibility regarding the items declared on the 8938? I already have a responsibility to make sure all revenue which I know about, or have reason to know about, is declared on the 1040. If I now will have the same responsibility regarding the assets and their values, it will be like doing an estate tax return every year in addition to the income tax return. This will multiply the time of annual tax return preparation by two or three, depending on the client!

Tax year 2000 was the first year the IRS electronic system accepted foreign addresses. There was an IRS town meeting in London (the first ever outside the U.S.) to introduce the overseas tax preparer community to electronic filing. I attended that meeting and started trying to file electronically, somewhat desperately I must say. Returns overseas are complicated returns. And as I mentioned above, my clientele is the middle and low income community. That's where most returns come from. Contrary to popular belief, most Americans in France are not wealthy. You can only bill these people so much, and I was desperately trying to make my practice viable.

Due to continued limitations in the IRS system, in particular concerning the special rules for foreign spouses, and tax software limitations concerning foreign addresses, I could only file one or two returns electronically every year for several years. Even after I changed software and had worked with the software engineers to upgrade their system, I was still limited by the IRS system. Then one day the then head of ETA responded to one of my e-mails and put me in touch with an IRS employee in ETA who had international experience and understood what I was talking about. Together we started working on the foreign spouse issues and he requested the necessary enhancements of

the IRS electronic filing system. In the process, Publication 501 was also modified to more clearly address the rules concerning foreign spouses. And from that time on, I believe it was 2004, filing electronically from overseas became economically viable.

So, what is the scope of this new form vis-a-vis electronic filing? What with the exchange rate as it has been, most people, even middle income people, will have \$50 000 in assets outside the U.S. (the exchange rate has nothing to do with the cost of living). Most Americans overseas will have to file the 8938. Will I be able to file their returns electronically? Or are you going to put me out of business after all these years of struggle? Part A of the form has room for four accounts. This is ridiculous. How many accounts do you and your family have in the U.S.? Americans who live here, have their life here, and they end up quite naturally with all kinds of accounts where they live, just like Americans who live in the U.S. (joint accounts with their spouse, custodial accounts for their minor children, power of attorney over accounts of aged relatives, business accounts if they have a business like me, blocked accounts to guarantee payment of rent, not to mention personal savings and checking accounts, etc.). Is there going to be a limitation on the number of foreign accounts and assets one can have and still e-file?

I sincerely hope that solutions to the above issues will be implemented before we are required to file Form 8938.

With my very best regards,

Norman Reuter

1/19/2011

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