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December 26, 2010

Gerald Shields  
Internal Revenue Service  
Room 6129  
1111 Constitution Avenue, NW  
Washington, DC 20224

RE: Comments on Form 8938 Statement of Foreign Financial Assets

Dear Mr. Shields:

Allow me to comment on Form 8938 Statement of Foreign Financial Assets from a practical viewpoint. This form is unnecessary and an extreme burden to the taxpayer. This form will not reduce paperwork or reduce the respondent burden. Form 8938 duplicates, for the most part, information available elsewhere. It will not be a revenue generator but represents an economic cost to both the IRS and the taxpayers. The 1 hour 05 minute time per respondent is completely unrealistic.

Please note that my comments are limited by the unavailability of instructions for Form 8938.

**Form 8938 Part A – Schedule of any financial asset maintained by a foreign financial institution**

This information is already available through Form TD F 90-22.1 Report of Foreign Bank Accounts. May I suggest you allow Form TD F 90-22.1 to be part of the related tax form (1040, 1120 etc) and to benefit from extensions for those forms?

**Form 8938 Part B – Schedule of any stock or security issue issued by a person other than a U.S. person**

I do not live overseas but as part of my diversified portfolio I have one account with international stocks with an aggregate value in excess of the Form 8938 reporting threshold of \$50,000. I have 33 different holdings in that account, and Form 8938 asks me to list the maximum value of each stock during the year. I may also have foreign stocks in my other accounts, or as part of my retirement plans. It certainly would take me more than an hour to determine the maximum value during the year on each and every foreign stock. I may not even be aware which stocks in other parts of my portfolio are foreign. My stocks are held by a US brokerage firm which issues me a 1099. My understanding is that foreign institutions with US investors will also be required to issue a 1099 under FATCA. The reach of this reporting requirement via Form 8938 is far greater than the 378,000 respondents you anticipate, and I believe, unnecessary.

Gerald Shields IRS  
RE: Form 8938  
12/27/2010

**Form 8938 Part C – Schedule of any other instrument, contract or interest**

Without instructions it is unclear what is to be included in this section.


**Form 8938 – Part D – Schedule of any interest in a foreign entity**

This information reporting requirement for foreign entities is already covered by Forms 5471 (foreign corporations), 8865 (foreign partnerships), 8858 (foreign disregarded entities) and 3520 (foreign trusts). For Form 8938 how is "any interest in a foreign entity" defined? What particularly concerns me is the requirement to report the maximum value of the interest in the foreign entity. Many private companies, domestic and foreign, do not evaluate the fair market value of their entity on an ongoing basis. How is the "value of the interest" to be defined? Book value? Fair market value? Discounts for minority interest? Other relevant information is already available through the forms cited above for reporting on foreign entities and any additional information would not result in more tax revenue.

**Conclusion**

IRC 6038D(h) gives the IRS authority to issue regulations necessary to carry out the intent of IRC 6038D. I hope that the conclusion by the IRS is that Form 8938 is unnecessary. However, if the IRS wishes to proceed with Form 8938 I would suggest an extension of the comment period to late summer 2011 with draft instructions provided in advance of the comment deadline. Please do not hesitate to contact me regarding my comments on Form 8938.

Sincerely,

A handwritten signature in cursive script that reads "Katherine T. Leonard".

Katherine T. Leonard, CPA  
Partner