

Mr. Gerald Shields
Internal Revenue Service
Room 6129
1111 Constitution Avenue N.W.
Washington D.C. 20224
U.S.A.

December 31, 2010

Dear Mr. Shields,

In 1959 my small business career in Bordeaux (France) began at age 25, trading in French wines.

Since then I held diverse responsibilities in both private and public sectors across several jurisdictions and languages. Intense world-wide regulation of alcoholic beverages obliged much experience of compliance, regulatory, authentication and tax issues. I have also held quasi-enforcement responsibilities as appraiser & agent of marine insurers with special reference to fraudulent claims and salvage fraud, and served as arbitrator. Issues of regulation, accountability, security and good order between private and public interests have been of more concern during my career than for the average American.

Congress' attempts to regulate economic activity of overseas US citizens have gradually lost my respect and confidence. To justify these remarks would take many pages. We are concerned today with the 8938 'package' of requirements. You have heard from organizations such as AARO. An individual may speak more bluntly than an organisation; the 8938 package shows bad faith at several points, at other points is downright stupid because unworkable, cannot possibly justify its combined public and private sector costs, is a property census not an income tax measure (thereby risking constitutional objections), will further damage our relationships with other nations, and will alienate a great number of Americans, paradoxically those of above-average ethical and educational level.

The 8938 'package' has in common with 'Controlled Foreign Corporations' rules, with minimum interest rules, with the reporting obligations of 90-22 form, and other compliance notions, an insincere relation of detail to purpose. The true purposes are to facilitate prosecution of big-time income tax evaders, when detected, and to frighten US expatriates by terrific penalties for non-compliance. Hence its sweeping ambiguous and evasive language.

8938 worsens an already bad situation. IRS agents abroad are in the silly position of telling worried citizens to ignore some published rule, and even to lie, because, in the words of a senior agent (London) to me in the 1980s 'we certainly do not have people like you in mind.' In 2005 the US Paris embassy advised perjury as a solution to incoherently worded information forms. In the 1970s my USA accountant billed me for 17,000 USD of time in a vain effort to educate a young IRS 'auditor' about Controlled Foreign Corporations –what they were, what the idea was, how the idea mismatched the

language and reporting forms, etc. This agent abandoned the 'audit' unfinished, with no apology no explanation and no conclusion. Sidney Roberts Esq. (Roberts & Holland), who drafted that legislation for the Kennedy administration, told me in person in New York City in the 1960s that after Congress turned his drafts into legislation no one in this world any more understood 'Foreign Controlled Corporations.'

Many particulars of the 8938 form are impractical. Part B asks for the address of an 'issuer of a security' other than a US person. What bank or brokerage statement of non-US securities furnishes 'issuer addresses'? What is the 'address' of a Vietnamese 'investment certificate'? Of a Czech company when listed on the Warsaw stock exchange?

Demands for 'maximum value during the taxable year' are nearly insane. (Does Congress mean calendar year?) Illustration: the maximum USD year 2010 value of 100 shares of a Brazilian stock is a function of two independent variables: the highest daily price in Brazilian Reals and the USD/Brazilian Real daily exchange rate. Solution requires approximately 240 multiplications, one for each business day. The IRS represents that the total time to complete 8938 is one hour. There is a short ugly name for that representation.

Mr. Shields, French Spanish and Italian indirect tax authorities are unable to collect an estimated four-tenths of value-added taxes due from the private sector. I have worked at grass-roots level in two of those jurisdictions and am here with simple messages.
The government that lies to its people will receive back lies from that people.
Where tax demands & procedures are perceived as deeply unfair, people somehow evade them.

Part C is scandalously vague. It asks after 'instrument, contract or interest'. What is an 'interest'? I have an 'interest' in a country house in Italy bequeathed to me per a relative's testament. What is the 'address of the issuer' of this interest? Is it the executor or the testator who isn't yet quite dead? What is its maximum value in 2010? The French marriage contract with my wife separates our properties but stipulate exceptions for certain property now mine on which she has a potential claim. It is, incontestably, a financial contract. Who issued this contract and from what address? The law firm that drew it or the Mayor's office of Bordeaux, France? What was its 'maximum value' in 2010? And to whom?

Part D asks after an interest in a 'foreign entity.' Name, address, description and maximum value during the 'taxable year.' Given past experience I contend that the IRS cannot word a definition of what is or is not a 'foreign entity' understandable to a literate businessman. Our tax code is already the laughing stock of the educated English-speaking world. We do not need yet more of this secret language which means what a bureaucrat wishes it to mean.

By this point an unstated Congressional intention emerges. US citizens abroad will have to engage US tax counsel in order to complete 8938. That advice will cost between 200

and 600 dollars an hour. It will require ability to use a computer and the internet. It will take a great deal of time. It will cost a great deal. To assert that it will effect 'only' some 350,000 of us is another falsehood, and is infuriating. It will affect at least two million-odd, likely nearer four million. The information will be inaccurate and incomplete. Taxpayers will make a stab at the right numbers. As with 90-22, wrong-doers will not file or will file falsely.


When I was young every overseas American I knew complied with all IRS requirements. I can assure you that today that isn't so. Many overseas Americans don't even know of their duties; the 90-22 is news to them!! Some file a 1040, others imagine themselves in compliance insofar as they honestly file and pay taxes where they live and work.

I have studied 8938 carefully and gone back over the *five* decades of my own nit-picking compliance with every new batch of requirements. I cannot find a single instance where these forms and definitions peculiar to overseas Americans achieved anything *for the US Treasury Department*. The menaces, suspiciousness and complexity of these measures contributed, in 1996, to closing up my modest but profitable self-owned company rather than expanding it by adding younger partners.

Form 8938 will send a great number of creative and enterprising Americans to form 8854. That is my sad prediction here.

With regret at the length of this letter and thanks for your attention, I am, Sir,

Yours sincerely,



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formerly:

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