

# LAW OFFICES OF SANFORD I. MILLAR

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## Foreign Assets; What Must I Disclose?

January 29, 2012

Beginning with income tax returns for 2011, U.S. individual taxpayers must attach a statement (Form 8938) to their return if they hold an interest in “specified foreign financial interests” and the value of those interests exceed certain thresholds. Example for an individual the threshold is \$50,000 at year end or \$75,000 at any time during the year.

For certain assets this will not be a difficult test to satisfy. If assets consist entirely of funds in a foreign financial institution and they exceed the threshold the test is satisfied. But the test may not be quite so simple for individuals that hold interests in closely held businesses or have interests in foreign trust or estates. The difficulty may come in estimating the value of those interests.

The regulations do not require an appraisal by a third party, which should be a relief to tax return preparers and taxpayers alike. But the absence of the need for a third party appraisal is not the end of process. For taxpayer’s who have a beneficial interest in a foreign trust, there is a two part test. The first part is to determine the sum of all distributions made to the taxpayer during the year and the second part is to add the value of the mandatory future distributions to determine the value of the interest. The same process applies to interests in foreign estates. What this all means is that tax return preparation may get more burdensome for both return preparers and taxpayer’s. It is also interesting to note that there are civil and criminal penalties for failure to file Form 8938. The civil penalty is \$10,000.

As part of preparation tax “season” many accountants and return preparers send out “organizers”. The 2011 organizers in many cases will contain questions designed to determine if a Form 8938 is required. The organizer and all other information provided to the return preparer is subject to production at the request of the [IRS](#), by summons and can be used in civil and criminal proceedings. It is therefore important that all information be accurate when provided to the return preparer. If the return preparer discovers that the taxpayer should have been filing information returns like a

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Report of Foreign Bank Account (FBAR) or Form 5471, Return of a Controlled Foreign Corporation, or Form 3520, Report of Foreign Gift or Bequest, the taxpayer should then be referred to counsel so that privileged communications can be established immediately.

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