



News Release

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IRS Releases Guidance on Foreign Financial Asset Reporting

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WASHINGTON—The Internal Revenue Service in coming days will release a new information reporting form that taxpayers will use starting this coming tax filing season to report specified foreign financial assets for tax year 2011.

Form 8938 (Statement of Specified Foreign Financial Assets) will be filed by taxpayers with specific types and amounts of foreign financial assets or foreign accounts. It is important for taxpayers to determine whether they are subject to this new requirement because the law imposes significant penalties for failing to comply.

The Form 8938 filing requirement was enacted in 2010 to improve tax compliance by U.S. taxpayers with offshore financial accounts. Individuals who may have to file Form 8938 are U.S. citizens and residents, nonresidents who elect to file a joint income tax return and certain nonresidents who live in a U.S. territory.

Form 8938 is required when the total value of specified foreign assets exceeds certain thresholds. For example, a married couple living in the U.S. and filing a joint tax return would not file Form 8938 unless their total specified foreign assets exceed \$100,000 on the last day of the tax year or more than \$150,000 at any time during the tax year.

The thresholds for taxpayers who reside abroad are higher. For example in this case, a married couple residing abroad and filing a joint return would not file Form 8938 unless the value of specified foreign assets exceeds \$400,000 on the last day of the tax year or more than \$600,000 at any time during the year.

Instructions for Form 8938 explain the thresholds for reporting, what constitutes a specified foreign financial asset, how to determine the total value of relevant assets, what assets are exempted, and what information must be provided.

Form 8938 is not required of individuals who do not have an income tax return filing requirement.

The new Form 8938 filing requirement does not replace or otherwise affect a taxpayer's obligation to file an FBAR (Report of Foreign Bank and Financial Accounts). For more on the FBAR requirement, please go to [page link here](#).

Failing to file Form 8938 when required could result in a \$10,000 penalty, with an additional penalty up to \$50,000 for continued failure to file after IRS notification. A 40 percent penalty on any understatement of tax attributable to non-disclosed assets can

also be imposed. Special statute of limitation rules apply to Form 8938, which are also explained in the instructions.

Form 8938, the form's instructions, regulations implementing this new foreign asset reporting, and other information to help taxpayers determine if they are required to file Form 8938 can be found on the [FATCA page of irs.gov](#).

See [TD 9567](#).