

16 December 2010

Gerald Shields, IRS
Room 6129
1111 Constitution Avenue, NW
Washington DC 20224

Re: Comments on Draft Form 8938

Dear Mr. Shields,

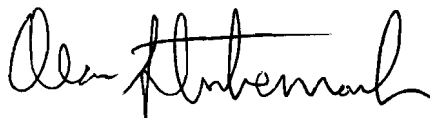
I am a US citizen living overseas since 1981. The vast majority of my income, including my payroll is sourced from the UK where I live. As such, I will be directly affected by the proposed changes to US tax forms, and so wish to make a few comments regarding the proposed new Form 8938, Statement of Foreign Financial Assets.

- I see this new proposed form as largely duplicating the current Form TD 90-22.1 which is also required to be completed each tax year and sent to the US Department of Treasury in Detroit.

- As with Form TD 90-22.1, I will be required to complete the new form for both current and matured/closed accounts for the tax year. Last year, I spent ca. 3 hours completing Form TD 90-22.1 for all these accounts and expect the new Form 8938 to take at least just as long.

- If the proposed Form 8938 is passed, then I suggest removing the requirement to also complete Form TD 90-22.1, or perhaps simply combine the two forms. On the other hand, perhaps the Detroit office could forward copies of their completed TD 90-22.1 forms to the IRS in Washington DC?

Regards,



Alan Stubenrauch
(Social Security No. [REDACTED])
60 Albury Road
Aberdeen AB11 6TL
Scotland, UK

Doc. Cat. Num: 37753A
OMB # 1545-2195

FROM A CITIZEN WHO CARES: Form 8938

I can already state that the reporting burden of "information" only returns for small business owners and individuals who do business overseas is overwhelming. The rules are complex and contradictory and as an expert in this field, I can tell you that most CPAs and IRS agents are entirely unqualified to help Americans with overseas lives and interests. Most of us pay plenty of local taxes anyway, so the IRS just imposes tremendous costs, for a really questionable benefit. The only way the IRS should be allowed to implement this form is if the FBAR burden is eliminated....the amount of duplicate information requested is ridiculous and you are punishing those of us who comply while you already have enough rules and information to punish those who do not...

Additionally, the President's dream of increasing exports will remain a dream as long as the IRS continues to punish its citizens overseas and its small business owners who try to do business overseas. The National Taxpayer Advocate has reported extensively on this subject, which the IRS seems to ignore....Most large businesses now are implementing policies against hiring Americans overseas (yes I know this for a fact because I work with many of these international companies and their employees!!!)

If you take the average working hours per year is 2000 hours. An increase in 378,000 hours for one information only return is the cost of 190 working lives. Add in the FBARs, the 5471(which the National Taxpayer Advocate states can take up to 3 weeks per company) and all the other info only returns and the IRS continues to fill its computers with tons of information that will never be used. Cut out the waste first before trying to implement new reporting requirements.

The IRS should be severely limited on what they can request which does not directly increase the revenue of the United States Government. The theory of Mr. Shulman that increased reporting leads to increased revenue is only a theory and the people who make the rules are very ignorant of how the world operates outside the US borders. This ignorance continues to cost us competitiveness in the world and is the reason why many companies and individuals are now shunning the US for their operations and why many investors are divesting of shares in US companies...

If the US acted like all the other OECD members and only taxed people on residency instead of citizenship, the net benefit to society and to the US government would be so much more than this current mess of a system.

As a small business owner I can now tell you that between compliance with Federal Tax laws, the SEC, State laws, overseas laws, etc etc. over 70% of my business activity results in either taxes paid or compliance....it is not worth growing my business any larger and it is not possible to serve low and medium income clients....

You will regulate your agency into oblivion if you do not start simplifying the reporting requirements. The requesting of duplicate information by the government should be expressly forbidden; if the FBAR is not sufficient for the IRS and the Department of Treasury, and this form is used as a replacement, that is fine, but don't keep both, this is not right and not fair. It is also not right and likely unconstitutional to treat overseas Americans differently than Americans living in the US. Remember, the FBAR fines were meant for drug dealers, terrorists and money launders, not ordinary Americans; add on top of this laws that most tax lawyers and CPAs don't fully understand, how can you reasonably expect people to have to comply with a system like this? This is shameful.

Then, when IRS "experienced" agents are sent for outreach (like two agents visiting Geneva, Switzerland on December 7th, 2010 from the IRS Paris office) and they give such poor answers or can not answer simple questions, what a bad joke....this is an embarrassment to the Service, to the Government and to our Country.

In short,

- The IRS should not implement this form unless the FBAR reporting requirement is eliminated.
- Any duplicate information from the 5471 should not be required to be entered on this form for people who own foreign companies.
- All Pension accounts or similar that are tax compliant in the country where they are located should be eliminated from reporting. Local pension accounts should not have to be Qualified by the IRS or be covered by a tax treaty to be eliminated from this reporting requirement.
- All reporting whereby the individual is not the beneficial owner of the assets should be eliminated. Current rules, like with the FBAR don't imagine that Americans actually work in the accounts payable department of an overseas employer.
- The \$50,000 threshold is too low. Raise this to \$250,000 or \$500,000 and index it to inflation and the value of the dollar index versus a basket of securities.
- No IRS penalties should be allowed if the account owner is in compliance with all tax reporting in the jurisdiction where the account is held.

From a tax payer who cares and is tired of the IRS running ragged over its overseas American citizens

*127 Fortis Green Road
London N10 3LX*

24 December 2010

Gerald Shields IRS
Room 6129
111 Constitution Ave NW
Washington DC 20224

Dear Mr. Shields,

I am writing to comment on the proposed form 8938, "Statement of Foreign Financial Assets". I have downloaded a copy of it.

I do not believe the collection of information in this detail will be necessary for you to find out about taxpayers' foreign assets. You already have a form collecting this information, 90-22-1. That form, although not going into detail that is asked for in the proposed 8938, provides the Agency with almost everything it needs to find out more about foreign assets of a taxpayer. As I will describe below, there is a real problem in asking for the detail you are proposing to ask for.

Your estimate of the burden of collection of information on the respondents is extremely low. The detail requested in section B of stock or security issued by non-US persons alone would take hours, especially if the respondents had to delve into retirement funds to find out what securities were in there. Imagine all the different holders of a large company like BP would have to go through! The same goes for your section C, which could take hours to find out about and list leases, financing of automobiles, and other simple financial instruments.

To maintain the efficiency you are seeking, I recommend deleting the entire sections B and C from the proposed form.

As for the intent of section D, "Schedule of any interest in a foreign entity", there must be a better wording for this. The same problem with holders of BP stock I alluded to above arises. What you probably mean is "controlling interest" in a foreign entity. Then you have to describe what controlling interest means in the instructions.

In conclusion, I do not think the form as you have proposed it will accomplish what you are trying to do. On the contrary, it will submerge your agency in a mountain of forms and data for the millions of Americans (not hundreds of thousands, as was erroneously reported) holding such assets, cause the taxpayers millions of hours of extra work – all of which could have been avoided by simply enhancing the existing data collection form 90-22-1.

Yours truly,

D. Hugh Rosenbaum, SS number [REDACTED]

D. Hugh Rosenbaum



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December 20, 2010

Mr. Gerald Shields
IRS, Room 6129
1111 Constitution Avenue, N.W.
Washington DC 20224

Reference: Draft Form 8938, "Statement of Foreign Financial Assets"

Dear Mr. Shields;

In response to your request for comments on the proposed form to be used to report American citizens foreign financial assets, I submit the following:

- a. the quote, "as part of its continuing effort to reduce paperwork and respondents burden", I find it difficult to rationalize when we are asked to fill out another form that may take an hour of the taxpayer's time. Add to that the number of people the IRS will likely hire to implement this program and you have another monster.
- b. You should have a cost vs. benefit analysis performed outside the IRS or the U.S. Treasury Department. I read recently for every tax dollar collected there is a \$1.60 of government debt. It would seem a far better thing to start from zero on the thousands of pages you have in your tax codes, closing those loop holes instead of picking on American citizens living abroad to possibly gain more IRS revenue. That would seem a lot more beneficial to all tax payers concerned.. If this form is implemented it can only add new costs in our government operations that are not covered by significantly increased revenues. It seems the information collected will have no practical utility.
- c. In looking at the form, I can guarantee you have not left enough room to write in all the information requested.
- d. Since the form delivered did not include instructions, I cannot fully interpret the form. For example, in Part A, what is the definition of a "financial institution"? In Part B., what is the definition of stock or security by class, issue and type? Why does it matter what the maximum value is of the stock or security during the year? Last I heard, capital gains are not taxable if you don't sell them. Why do you need that information? Ditto for Part C. What is a "counter party". In Part D, Foreign is misspelled in the last column.
- e. You have estimated the Time for the Respondent to fill out the form. One hour is not enough for what you are asking. Also, what is the time required for an IRS employee to review the information provided? Key to the cost of this program.

I would hope that Form 8398 and its Instructions are reviewed by the OMB or any other auditor to perform a cost vs, benefits analysis as well as clearly defined questions asked for in this document.

In November of 2010, the US Federal Register estimates that 350,000 persons will respond to this form. It would be interesting to know what methodology was used for that number.

There are more than five million Americans living abroad. Did they use 5 million in determining the net number of people? What was the source of their information?

Thank God I don't have \$50,000 in a foreign bank account!

Sincerely

A handwritten signature in black ink, appearing to read "Don Johnson", with a long horizontal flourish extending to the right.

Don Johnson
Vice President
Association of Americans Living Overseas

Cc: Jack Lewis, Director, (OMB)

IRS

Gerald Shields Room 6129

Dear Mr. Shields,

I was dismayed to learn that I would need to fill in an additional form to complete my tax return for 2011. I have lived and worked and paid taxes in France for over 25 years. I am a US citizen and as such I also file taxes every year. My French tax return takes less than 2 hrs to complete, and I can do it on line. My US tax return takes days to complete, as you must find appropriate worksheets and compute numerous items – I always shake my head sadly and laugh ruefully when I read about the reduction in paperwork act.

I have reviewed form 8938 in its draft form and have a few comments:

Part A is all information submitted to treasury on form TD F 90-22.1, does this mean we won't have to file this form anymore? As doing it twice is not an appetising thought – it takes a good hour to get all the information into the form.

Part B is already reported in schedule D for any stocks that were traded during the year. I sincerely hope the US is not contemplating a tax like the French ISF which is a wealth tax which examines all your holdings and takes a small percentage of it – if you read the french news this is a major issue at the moment. Stocks are also held here at financial institutions such that the accounts would be listed in part A, or TD F 90-22.1, and transactions on Schedule D. So once again this is twice the reporting – this would be another 2 hrs at least if each stock held needs to be reported individually and not globally in an account.

Part C I am at a loss at to what this reference to so I imagine I have no holdings in this area, but again for someone who does have say insurance contracts this will take some time. Any interest from these would already be reported on Schedule B – this will lead to confusion should we report twice???

Part D This is already declared in Schedule E if real estate or trust, and Schedule C if a business. So once again this is a repeat of existing information.

It seems to me that the new form makes a difficult process even worse. It would take me another 5 hrs to do this reporting especially wondering if all the numbers on all the different forms match. When will overseas tax payers be able to file on line?

Sincerely

Elaine Rothman

Distressed taxpayer



Part C. Complete blocks (a) through (f) with schedule of any other instrument, contract or interest (see instructions).

(a) Name of issuer	(b) Address of issuer	(c) Description of other instrument, contract or interest
(d) Name of counterparty of instrument, contract or interest	(e) Address of counterparty	(f) Maximum value of other instrument, contract or interest during taxable year

Part D. Schedule of any interest in a foreign entity (see instructions).

Name of foreign entity	Address of foreign entity	Description of interest held in foreign entity	Maximum value of interest in foreign entity during taxable year
Draft			

Cat. No 37753A

All this information is already declared in existing forms I do not understand why you are adding forms.

lots of time
waste

DRAFT FORM xxxxx -STATEMENT OF FOREIGN FINANCIAL ASSETS

Form **8938**

(Rev. July 2010) Dept. of the Treasury Internal Revenue Service

Statement of Foreign Financial Assets

>Attach to your tax return if you owned specified foreign financial assets having an aggregate value of more than \$50,000. >See separate instructions.

OMB No. 1545-xxxx

Attachment Sequence No. **XXX**

Name(s) shown on your income tax return

Identifying number

Important: Fill in all applicable lines and schedules. All information **must** be in English. All amounts **must** be stated in U.S. dollars unless otherwise indicated.

Complete Part A if you held any interest in any financial account maintained by a foreign financial institution during the taxable year (see instructions), **and**

Complete Part B if you held any interest in any stock or security issued by a person other than a United States person (see instructions), **and**

Complete Part C if you held any interest in any financial instrument or contract held for investment that has an issuer or counterparty which is other than a United States person (see instructions), **and**

Complete Part D if you held any interest in a foreign entity (see instructions).

Part A. Schedule of any financial asset maintained by a foreign financial institution (see instructions).

Name of financial institution	Address of financial institution	Financial account number	Maximum value of account during taxable year
Draft		TD F 90-2201	
		will this eliminate that form?	

if not
2x the work
2 hrs

Part B. Schedule of any stock or security issued by a person other than a U.S. person (see instructions).

Name of issuer	Address of issuer	Description of stock or security by class, issue and type	Maximum value of stock or security during taxable year

Foreign stock should already be listed on Schedule D. again 2 hrs

From: [Terry Ralph M](#)
To: [Shields Gerald J](#); [Tarris Virginia M](#);
Subject: FW: comments on burdens imposed by Form 8938 - Continued
Date: Wednesday, December 29, 2010 9:57:30 AM

From: Norman Reuter [mailto: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.

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.

In 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

PTIN: P00155590

Telephone direct dial: 011 33 1 47 05 01 52

Fax direct: 011 33 1 47 05 56 48

1 rue de Villersexel
75007 PARIS, FRANCE

----- 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.

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

PTIN: P00155590

Telephone direct dial: 011 33 1 47 05 01 52

Fax direct: 011 33 1 47 05 56 48

1 rue de Villersexel
75007 PARIS, FRANCE

From: [Terry Ralph M](#)
To: [Shields Gerald J](#); [Tarris Virginia M](#);
Subject: FW: Draft form 8938 -- please forward to Mr. Shields
Date: Tuesday, January 04, 2011 8:59:31 AM

From: kimberly buckley [mailto:kab_kimberly@yahoo.com]
Sent: Tuesday, January 04, 2011 6:01 AM
To: Terry Ralph M
Subject: Draft form 8938 -- please forward to Mr. Shields

Dear Mr Terry,
Please forward this comment to Mr. Shields.

Dear Mr. Shields,
In regards to Draft form 8938: Please be aware that US citizens living overseas often have joint accounts with their non-US spouses. This form would then require disclosure of accounts to the US government by non-US citizens. This adds a layer of complexity to a form that is already confusing. Would I disclose how much I contributed to the account, or the whole amount.

Please keep in mind many ex-pats are non-working spouses. If we can not maintain joint accounts with our spouses due to the US tax burdens and forms, it makes our financial situation very precarious.

Please reconsider. How is this form necessary? Is there a way to exclude expatriate Americans? The US tax system is burdensome (paying tax in both countries) to us here as it is.

Best Regards and Good Luck,
Kimberly Opdam

From: Terry Ralph M
To: Shields Gerald J; Tarris Virginia M;
Subject: FW: Form 8938 Statement of Foreign Financial Assets
Date: Wednesday, January 05, 2011 4:45:35 PM

From: Sally Warren [mailto:warrensally@wanadoo.fr]
Sent: Monday, January 03, 2011 10:53 AM
To: Terry Ralph M
Subject: Re: Form 8938 Statement of Foreign Financial Assets

Dear Mr. Terry,

I offer the following comments on proposed Form 8938 of Foreign Financial Assets:

1. Part A appears to request the same information as required by the existing Treasury Form. It is a little difficult to track the maximum value of a savings account that does not provide regular statements; however, this is a minor point compared to Part B.
2. Schedule of any stock or security issued by a person other than a U.S. person - name, address, description of stock or security by class, issue and type, maximum value during taxable year. In the case where one's funds are under management, one does not have regular access to all the requested information. As part of my reason for having funds managed is to save myself the time involved in managing the a/c myself, this request would be burdensome especially in the case of an actively traded account. And, in due course, it would undoubtedly lead to increased fees from brokerages / investment managers who would ultimately have to provide the requested information.
3. Setting "the aggregate value at more than \$50,000" does not strike me as the best approach. It might be better to set an individual holding limit or raise the aggregate amount.
4. Whereas the existing Treasury Form is required of anyone having signature authority over a foreign bank account, which in most cases would be expatriates, the new form appears to require anyone whether expatriate or not to complete the form. I believe it should be required of anyone with foreign assets, otherwise it would discriminate against expatriates. Most U.S. expatriates I know keep their investments in U.S. markets. In a global world, this form seems to be trying to get Americans to keep their assets in the U.S. domestic markets. That would be foolish from an investment point of view with an eye on diversification.
5. It is not clear to me what the aim of tracking such information is. I would rather the U.S. close a loop hole I see in Social Security payments - spousal payments to non-Americans married to Americans in the case where the American files singly (not jointly) to avoid declaring the spouse's income. I do not myself like having my tax dollars go to making payments to husbands of friends who have never contributed to the U.S. Social Security System and who have never paid a \$1.00 of tax to the U.S. At a minimum, for such non-American spouses to qualify for spousal social security payments, there should be a pre-requisite that the American and non-American spouse file a 1040 jointly.

Sally Warren

On 15 déc. 10, at 21:48, Terry Ralph M wrote:

Ms. Warren,
In response to your request we are providing you with a link to the Form that was submitted as part of the Proposed Collection. The link below will download a PDF of the Form 8938.

<http://www.reginfo.gov/public/do/DownloadDocument?documentID=202248&version=1>

Thanks

Ralph M. Terry

Tax Analyst, Tax Forms and Publications
Special Products Section

202 622 8144 | SE:W:CAR:MP:T:T:SP | Internal Revenue Service | OMB Unit | 1111 Constitution Ave, NW, Washington, DC 20224 | Room 6129

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

From: Sally Warren [mailto:warrensally@wanadoo.fr]

Sent: Tuesday, December 14, 2010 3:48 PM
To: Terry Ralph M
Subject: Form 8938 Statement of Foreign Financial Assets
Importance: High

Dear Mr. Terry,

Please send me a copy of the subject draft form. I should like to comment on it prior to January 3, 2011.

Thank you.

Sally Warren

From: [Terry Ralph M](#)
To: [Shields Gerald J](#); [Tarris Virginia M](#);
Subject: FW: Tax reporting burden 8938
Date: Wednesday, January 05, 2011 4:42:38 PM

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

From: MNSenzyme [<mailto:MNS@enzymexcultural.com>]
Sent: Monday, January 03, 2011 6:44 AM
To: Terry Ralph M; 'Gerald'; Gerald.Shields@irs.gov
Subject: Tax reporting burden 8938

Dear Mr. Terry,
Dear Mr. Shields,

I am an American Women's Club member living in Germany. The new reporting requirements are an incredible additional burden. Since I was able to find a tax consultant who was keeping up to date with all of this (which in itself took many weeks of searching), I have spent more than \$100,000 in the last year and a half on tax consultant advice & help with all of the new rules & forms you all are concocting to catch ' tax fugitives'. This is almost more than my income, which is only dividends & interest! And is also way beyond what is reasonable considering the low amounts of investments (and resulting interest & dividends) I have for my three American children. It feels like we are being punished for saving for them. In any case, we are being punished for living abroad.

Your rules are worsening the economic safety of many American wives of foreign nationals since these men no longer want to give their wives signing powers over joint accounts, endangering their long term economic security. Several women I know have lost the kinds of joint signing powers that are normal & practical in an 'American' marriage.

Living abroad , one needs a local bank. But these local banks are refusing to work on American citizen accounts. I spent the past three years looking for someone to manage some investments and had to cross at least 10 institutions off the list because they no longer will work for an American citizen. My daughter, with her small savings, has had the same difficulty. My checking account bank here only keeps the account because they have had it for so long. I have had to move the brokerage business because the brokerage considered the new US reporting requirements AND the investment restrictions to difficult to implement.(NO ETFs or mutual funds, etc since they are considered PFICS) The many hours of research , interviews & follow up required just to do normal banking has already become a huge burden on

many ' normal' average Americans overseas. The tax reporting is becoming an expensive nightmare well beyond your 'time to fill out' estimates.

Worst of all, we are being discriminated against for choosing to live abroad- a scandal, considering that we are some of the country's most staunch and effective ambassadors.

Just because an American lives overseas, they should not be suspected guilty until proven innocent. The same reporting rules should apply to all Americans regardless of where they live. You do not ask in country living citizens for total net worth information. They do not have to send lists of highest balances on each their accounts. It is appalling, timeconsuming, & expensive, and putting Americans overseas at great disadvantage.

Short compliance deadlines have exasserbated the expense & confusion. The short timeframe for comments on 8938 (over the holidays when people should be spending time with their families)seem set to discourage comments.

Please send me a draft of the document by email immediately
Please reconsider the necessity & fairness of these new requirements.

Best regards,

Margaret Nelson Spethmann

Hochallee 89
D - 20149 Hamburg
Germany

Tel.: +49 (0) 40 - 460 70 313
Fax.: +49 (0) 40 - 460 70 314
Mobile: +49 (0) 172 970 1336
E-Mail: MNS@enzymexcultural.com
E-Mail: MNSenzyme@t-online.de

Howard M. Liebman
30 avenue de Boetendael
1180 Brussels
Belgium

December 23, 2010

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

Re: Proposed IRS Form 8938

Dear Mr. Shields:

I am writing in response to the kind request of the Internal Revenue Service for comments on its draft of a new tax form 8938. I have obtained a copy of this form and, as a U.S. citizen resident abroad, I took great interest in reviewing it.

As per your invitation, my comments are as follows:

- (i) First of all, I think that it is a good idea that you have used larger-sized boxes in Part A. I have always had problems in completing Form TD 90.22-1 because some of the boxes are too small.

That being said, I wonder if the information in Part A is not redundant to what we already have to report. It may not be all that good an idea to require essentially duplicative reporting.

- (ii) Reporting ownership of stock and securities is also potentially redundant. If an individual owns a substantial amount of privately-traded securities, then the entity in which the securities are held would presumably be a "controlled foreign corporation", triggering reporting on IRS Form 5471.

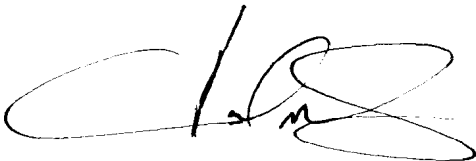
Taxpayers are also already required to report foreign-source dividends and capital gains, whether from publicly-traded or private corporations.

- (iii) The scope of Part C is not clear. The term, "contract", is especially broad. Presumably, you are trying to get at financial contracts such as swaps, options or derivatives. If so, this should be better explained and delimited. Obviously, there will be quite some difficulty in obtaining valuations for various investments which are not otherwise publicly traded. This will be time-consuming and potentially unduly burdensome, let alone expensive for the taxpayers involved.

- (iv) What is the difference between Schedule D and Schedule B? Certainly, if someone owns stock or security in a person other than a "U.S. person", that should also constitute a "interest in a foreign entity". Shouldn't you eliminate this redundancy? Perhaps you were trying to get solely at foreign partnerships or trusts?
- (v) Although the draft form applies to "specified foreign financial assets having an aggregate value of more than \$ 50,000", the result is that it can also apply to interests with a very small amount at stake, as long as everything taken together exceeds the \$ 50,000 limit. This can also be triggered solely by exchange rate fluctuations. Perhaps consideration should be given to setting a de minimis limit of \$ 10,000, this time for each interest to be reported on.
- (vi) Clearly, any individual living overseas will have one or more bank accounts and may invest in several types of securities in the country where they live or elsewhere (if only for purposes of spreading out asset allocations and hence risk). Thus, the burden of this new form should not be underestimated. It will certainly take several hours to pull together the information, and perhaps even more if research is required into the highest valuation for the year.

Thank you very much for your attention to these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "H. Liebman", with a large, stylized flourish at the end.

Howard M. Liebman



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
ATLANTA, GA 30308

WAGE AND INVESTMENT DIVISION

MAR 13 2011

Form 8938 comment

Ms. Jane A. Bruno, J. D.
1082 Vintner Boulevard
Palm Beach Gardens, FL 33410

Dear Ms. Bruno:

I am responding to your inquiry dated February 2, 2011, to the Commissioner of the Internal Revenue Service, Douglas H. Shulman. You provided comments concerning Form 8938, Statement of Foreign Financial Assets.

I am forwarding your correspondence to the Assistant Secretary of the Treasury for Tax Policy who develops and reviews policy, legislation, regulations, revenue rulings, revenue procedures, and other published guidance dealing with all aspects of federal income tax law.

Your correspondence will be brought to the attention of the appropriate officials for consideration during the Office's discussions of the issue or as part of an ongoing review of federal tax law. However, extraordinary workloads and limited resources often preclude substantive responses to, or even acknowledgement of, your letter.

Thank you for your comments. If you need further assistance, please call me at (267) 941-4669 or Ms. Worner, Identification Number 0530024760, at (267) 941-4651.

Sincerely,

Mayorie A. Gallagher
for P. J. Bazick
Field Director, Accounts Management,
Philadelphia

Bruno American Tax Services

Jane A. Bruno, J.D.

1082 Vintner Blvd.

Palm Beach Gardens, FL 33410

(561) 222-9273

FAX: (561) 429-4526

February 2, 2011

Received by the
**Commissioner's Correspondence
Office**

FEB 09 2011

Dear Commissioner Shulman:

I have been a tax practitioner for over 20 years, serving mostly Americans living overseas. During that time I have worked with countless people trying to make a living and raise a family in very different surroundings from that of most Americans who have never lived abroad. Virtually every client I have worked with sincerely wants to satisfy his or her US tax obligation, even though few will use services or receive benefits from the United States government. That is why I am enormously troubled by the new tax form 8938, Statement of Foreign Financial Assets.

In my view, this form takes everything that is wrong with Treasury Form 90-22.1, Report of Foreign Bank and Financial Accounts (FBAR), and makes it much worse. I have already commented to the Commissioner of the IRS, the President, the Secretary of Treasury and a number of Congressmen—none of whom bothered to respond—on the FBAR. However, I believe it is worthwhile to re-visit those comments in the context of this new form.

- (1) Confusing and overwhelming—It is widely acknowledged that the FBAR and accompanying instructions are difficult to understand and harder to comply with—which accounts need to be reported, how does one get a "maximum" value for the year, etc. Many tax preparers are not comfortable offering advice because, even as professionals, they are not really sure what is included or not—especially when it comes to foreign retirement accounts and pension plans.

And now comes Form 8938 that requires information if the taxpayer has any interest in a foreign financial account, a foreign stock or security, a foreign financial instrument or a foreign entity. This covers virtually every possible financial interest any one could have—whether there is a present interest or not and whether the taxpayer could actually access the funds or not (as with retirement plans). AND it is in addition to TDF 90-22.1 so not only is there a

duplication of effort, but it is not clear how much overlap there is or if the forms are looking for different things. I would note that as I write this the instructions for the form have not been released (it is February), even though it has been published that the form is required to be filed for the 2010 tax year. This is irresponsible and unfair to the taxpayers.

- (2) Intrusive and out of the scope of duties— What makes this form even more troublesome is that the IRS (and Congress) don't even pretend this is about collecting revenue. The form requires only that financial information be given –it is not a form to report taxable income. It has always been my understanding that the purpose of the Internal Revenue Service is to collect tax on reported income—not to start collecting financial details and then investigating whether the proper amount of income has been reported. Even on its face it is unrealistic to think that conclusions about the veracity of income reported can be gleaned from knowing the highest balance in a given account. It is entirely possible that a taxpayer could move money through an account—for example from a savings account for a child's college fees to a checking account to pay those fees—without actually earning any income on those monies. But this form, that has to be attached to the taxpayer's return, may give the impression the taxpayer has a large amount of funds when really he has moved money through different accounts—for reasons that are not the business of the IRS. A taxpayer living in the US is not asked these questions. What justifies asking them of Americans living overseas?
- (3) Penalties—Several of my clients are finding out the hard way about what it meant to join the "Voluntary Compliance" program initiated a couple of years ago so taxpayers could "come clean" on not filing the FBAR. One client, who had no idea she even needed to file the FBAR because she had been living in Africa, has now paid a UK firm nearly half a year's salary in fees to represent her—and has not even gotten the bill yet from Treasury for her penalty. This type of scenario is occurring over and over as taxpayers finally hear about the filing requirements, try to do the right thing, and get burdened with large fees for professional advice and IRS penalties. It is creating not only financial, but emotional havoc. These penalties cannot motivate taxpayers to do something they didn't even know they had to do—so their only function is to punish taxpayers for NOT doing that something—long after the fact. It is a sorry state of affairs when the United States cannot collect enough money to operate without resorting to fear tactics and punishment of a sector of the American population that has little voice or representation by virtue of living outside our borders.

I will close with the following comments:

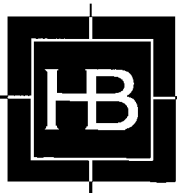
- Most Americans living overseas are just making a living and are NOT trying to keep taxable income from the reach of the IRS by hiding it in foreign bank accounts.
- For those Americans who set out to evade tax in this way the Treasury Department should explore other ways of finding and punishing them besides this heavy-handed approach that impacts too many innocent taxpayers. It is not unlike punishing the whole class because one kid was caught cheating.
- More effort should be made to educate Americans overseas about their tax filing obligations—perhaps re-open some of the overseas IRS offices or otherwise make the rules more available.
- Finally, if information gathering is now the new role of the IRS, then make the form AND instructions clear and concise enough that the average taxpayer can comply—LISTEN to the comments of American Citizens Abroad, the New York Bar Association, and all the other organizations and individuals that have put huge amounts of time and effort into proposing ways to improve this process.

Thank you for your attention to my concerns.

Sincerely,



Jane Bruno



HUTCHINSON and
BLOODGOOD LLP
CERTIFIED PUBLIC ACCOUNTANTS AND CONSULTANTS

7676 Hazard Center Drive, Suite 1150
San Diego, CA 92108
t 619.497.2415 f 619.497.2391
www.hblp.com

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,



Katherine T. Leonard, CPA
Partner



December 26, 2010

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

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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?

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Sincerely,



Katherine T. Leonard, CPA
Partner

Terry Ralph M

From: kimberly buckley [kab_kimberly@yahoo.com]
Sent: Tuesday, January 04, 2011 6:01 AM
To: Terry Ralph M
Subject: Draft form 8938 -- please forward to Mr. Shields

Dear Mr Terry,
Please forward this comment to Mr. Shields.

Dear Mr. Shields,
In regards to Draft form 8938: Please be aware that US citizens living overseas often have joint accounts with their non-US spouses. This form would then require disclosure of accounts to the US government by non-US citizens. This adds a layer of complexity to a form that is already confusing. Would I disclose how much I contibuted to the account, or the whole amount.

Please keep in mind many ex-pats are non-working spouses. If we can not maintain joint accounts with our spouses due to the US tax burdens and forms, it makes our financial situation very precarious.

Please reconsider. How is this form necessary? Is there a way to exclude expatriate Americans? The US tax system is burdensome (paying tax in both countries) to us here as it is.

Best Regards and Good Luck,
Kimberly Opdam



7 Station Passage,
South Woodford,
London, E18 1JL
Tel: 020 8989 0088
Fax: 020 8989 5527

Liz@BritishAmericanTax.com

29 December 2010

Gerald Shields
IRS
Room 6129
1111 Constitution Avenue NW
Washington DC 20224
USA

Re: Proposed Form 8938

Dear Mr. Shields,

I write to you with three hats on, that of a US taxpayer living abroad, that of an Enrolled Agent representing other US taxpayers living abroad, and as a representative of the Association of Independent Expatriate Tax Practitioners (AIETP). I am also active in the NAEA Government Relations Committee, and have cc'd a copy of this letter to NAEA's Bob Kerr for his consideration in NAEA's official response.

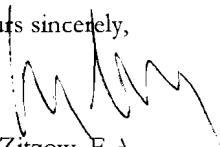
The form in its current incarnation will have many problems in compliance. There is also the matter of duplication of effort which does not make any sense.

Starting at the top of the form:

- 1) The initial information section is basically acceptable, except:
 - a. "All information must be in English."
 - i. The lack of sensitivity for Spanish speaking taxpayers, especially when so many taxpayers have assets in Mexico, is appalling.
 - ii. It is not clear whether names of assets such as Banco de Espania must be translated. This should be made clear.
- 2) Section A seems relatively straightforward, and not too difficult for the typical taxpayer having access to funds offshore.
 - a. It appears however to duplicate information required on Form TD F 90-22.1. This is excessive duplication. As the information is being reported to the Secretary of the Treasury on two different forms, then one or the other is unnecessary duplication of effort and one or the other should be abolished immediately.
- 3) Section B is duplicating information in Section A.
 - a. In section A, one would list one's offshore securities account.
 - b. Then, in Section B, one appears to be required to list each asset within the securities account.
 - i. This will confuse most taxpayers.
 - ii. There is no way to link any of the assets in Section B to their respective accounts in Section A.
- 4) Section B requires the highest value the asset attained during the calendar year.
 - a. Obtaining the value of a typical small business owner's offshore company (for example, my own company British American Tax), will be expensive and time consuming.

- i. Business valuation experts charge between 1% and 5% of the final valuation, and can take months to give a final report.
 - ii. Obtaining an annual valuation will be a costly and time consuming outlay.
 - iii. Because the US owner of a US unlisted corporation does not face this burden annually, this is inequitable.
 - b. Many people who work receive shares in company stock as part of their compensation package. If the company is an offshore entity and is unlisted, minority US shareholders will not have enough influence to demand an annual valuation.
 - i. This will reduce competitiveness and compensation for Americans as some will opt out of receiving stock and some companies will no longer offer stock options to American employees.
 - c. For a portfolio holder with a typical well-diversified portfolio, obtaining the highest value during the year for each offshore entity held within their portfolio will be difficult at best.
 - i. US brokerage houses are not set up to provide this type of information.
 - ii. Neither are offshore brokerage houses.
 - d. It is unclear whether ADRs should be listed here. They should be specifically excluded in the instructions.
 - e. We feel it would be fairer to list the average value or the year-end and/or sale value.
- 5) Section C requires maximum value of "any other instrument, contract, or interest."
 - a. We have been told that this would include offshore rental properties.
 - i. Asking taxpayers to obtain a valuation of their property annually will be a great cost to taxpayers with no tangible benefit to either the taxpayer or to the IRS.
 - ii. It will take weeks to obtain a professional valuation.
 - iii. Because the owner of US real estate does not face this burden annually, this is inequitable.
 - b. It is unclear just exactly what accounts and assets must be listed.
 - i. Is an offshore employer pension plan required to be listed?
 - 1. If yes, is it still required to be listed if it counts as a US pension plan under an income tax treaty with the US?
 - ii. Are normal insurance policies such as auto insurance, home insurance, etc. to be listed?
- 6) One hour to compile all the data is unrealistic.
 - a. For people with an asset requiring a valuation, it will take weeks and hundreds of dollars to obtain valuations for rental real estate and unlisted offshore entities.
 - b. For people with stock portfolios, I estimate it will take an average of 15 minutes per asset to research the historical values online. It takes longer than a US asset because many foreign listings do not have the easily searchable databases that NYSE and NASDAQ have. A typical well-diversified portfolio will have twenty investments. The total time estimate should therefore be much longer.

Yours sincerely,



Liz Zitzow, E.A.
Managing Director

Cc: Rob Kerr, NAEA GRC

17 December 2010, Paris, FRANCE

Gerald Shields,
IRS, Room 6129,
1111 Constitution Avenue, NW,
Washington DC 20224
USA

Re New Proposed IRS form SOFFA N°8938

Dear Sir,

We members of AARO have been asked to give our opinion on the above mentioned new IRS form.

I do not really see the point of this new form since we already fill out the TD-F 90-22.1 Report of Foreign Bank and Financial Account form.

We Americans who reside outside the country do so mostly for reasons related to employment. This is where the job is ! Had there been jobs at home, we would have stayed home. Furthermore, headhunters looked for us – we didn't look for them !

I feel that all this paperwork is a way of punishing citizens for having moved outside the country. Why must we be punished for living & working outside the country ?

We are faithful patriotic Americans who pay our income taxes every year, vote for president etc – you can check it out ! – and I feel it is unfair to be burdened with more paperwork.

This in spite of the fact that we are NOT represented in Congress. We fought our revolutionary war based on taxation without representation !! Well, we're not represented in Congress and yet we are good and responsible and we pay our taxes each year. Why must we be further punished with more paperwork ?

It has become so complicated to fill out the IRS forms that we have for the past ten years hired a tax attorney to fill out the paperwork on our behalf.

One more form to fill out will only give this tax attorney one more excuse to increase his bill for his services.

As it is, we pay him 15 times as much for filling out the forms as we pay in income taxes ! Fifteen times as much. That means if we owe the IRS \$100, for example, we pay this attorney \$1,500 for his services. It's horrendously expensive.

Please try to consider us first as Americans – just like you – who just happen to have another address.

Thank you for your interest in our opinion.



L. Pollet



serving overseas Americans and the international community since 1931

December 28, 2010

Mr. Gerald Shields
IRS, Room 6129
1111 Constitution Avenue, NW,
Washington DC 20224

Cc/ Office of Management and Budget

Ref: Draft Form 8938 (revised July 2010)

Dear Mr. Shields,

It is my understanding that the IRS has invited comments on its new form 8938, Statement of Foreign Financial Assets, and that these are to be directed to you. I am therefore writing in my own name and on behalf of the international federation I represent and, given the short timeframe, am also sending my comments via Mr. Ralph Terry, for whom I have an email address whereas I have none for you.

FAWCO is a global network of over 75 independent organizations, with more than 15,000 members in 39 countries worldwide. We are a recognized NGO with ECOSOC status and a 501(c)(3) corporation established in the State of New York. One of our purposes is to “provide a voice for American women abroad and to support the rights of all Americans worldwide.”

It is for that reason that I wish to comment on this proposed new form, which will be perceived by the large population of Americans living and working overseas as 1) extraordinarily invasive, 2) a huge burden and ultimately a waste of time for themselves and for the IRS and 3) illegal in some countries as being an invasion of privacy.

At the outset, I must categorically state that your assumptions regarding the number of people affected and the time burden involved are incorrect. This form will affect a large proportion of the law-abiding community of **over 5 million Americans** living and working around the globe, often directly for their country.

For this population, as for most Americans in the United States, maintaining bank accounts abroad is a normal part of our daily life. We receive salaries and pay income tax in the countries where we live, we take out loans for our cars and our studies and our homes, we invest in stocks and bonds and savings plans to supplement our income and prepare for retirement, we maintain joint accounts with spouses to feed and clothe our families, we use credit cards for a large proportion of our purchases, we pay our bills.

FAWCO U.S. Liaison: 21 Boulevard Lefebvre, F-75015 Paris, France – **Email:** USLiaison@fawco.org
U.S. Tel: +1 202-580-8186 / **Eur. Tel:** + 33 (0)1 45 86 35 18

FAWCO IS A NOT FOR PROFIT CORPORATION REGISTERED IN THE STATE OF NEW YORK,
ACCREDITED BY THE UNITED NATIONS AS AN AFFILIATED NON-GOVERNMENTAL ORGANIZATION SINCE 1995



serving overseas Americans and the international community since 1931

We are not some 350,000 persons residing in the United States and for some reason maintaining a bank account or investing in securities abroad. We are ordinary citizens and simply happen to live in Paris or Seoul or Munich because, in many cases, we married a foreigner or were posted abroad by our company.

Every year, it is my job to remind FAWCO members and visitors to our website of the requirement to file Treasury form **TD F 90-22.1 (the "FBAR")**. In my case, filling out the form, requiring checking year-long bank statements for a number of different checking, savings and brokerage accounts, is a long and tedious process. Moreover, the "maximum amount during the year" does not reflect the reality of my financial situation since often, the maximum amount in one account will re-appear 4 days later in another, having been the object of a transfer.

In addition to that, each time I open a new account or make a change in a securities account, I am required to fill out a **W9** form confirming that I am a US citizen. My banks then report each of these accounts to the US authorities.

Moreover, under new regulations which could take effect, my banks (if they continue to service my accounts in view of the extensive reporting required of them) may be obliged to report all income and bank movements to the IRS.

I therefore fail to see how my filling out yet another form and obliging the IRS to review it in addition to all the other information coming in to it can possibly be beneficial to me or the IRS.

Surely the **Paperwork Reduction Act** prohibits such a huge waste of time and paper!

FAWCO is one co-signatory of a letter to you with detailed comments on various technical aspects and ramifications of your proposed form. If I am writing to you in my own name and on behalf of FAWCO, it is to complement that letter with the personal perspective of men and women like the members of my federation who have clearly been overlooked in the process of drafting this form. The vast majority of us, like the vast majority of residents of the United States, are law-abiding citizens. This new reporting requirement on us which **duplicates work** already required by the Treasury Department and compounds it with even more extensive information requirements would result in a great cost in time for overseas Americans, a daunting verification burden for the IRS and ultimately, a pointless exercise, since it most heavily affects not the tax evaders and money-launderers you seek to target but perfectly law-abiding citizens who have no choice but to deal every day with "foreign financial institutions".

On behalf of the 16,000 members of FAWCO and the rest of the population of 5 million overseas Americans, I respectfully urge you and your colleagues to reconsider the need for Form 8938.

Yours sincerely,

Lucy Stensland Laederich, FAWCO U.S. Liaison



serving overseas Americans and the international community since 1931

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Terry Ralph M

From: MNSenzyme [MNS@enzymexcultural.com]
Sent: Monday, January 03, 2011 6:44 AM
To: Terry Ralph M; 'Gerald'; Gerald.Shields@irs.gov
Subject: Tax reporting burden 8938

Dear Mr. Terry,
Dear Mr. Shields,

I am an American Women's Club member living in Germany. The new reporting requirements are an incredible additional burden. Since I was able to find a tax consultant who was keeping up to date with all of this (which in itself took many weeks of searching), I have spent more than \$100,000 in the last year and a half on tax consultant advice & help with all of the new rules & forms you all are concocting to catch ' tax fugitives'. This is almost more than my income, which is only dividends & interest! And is also way beyond what is reasonable considering the low amounts of investments (and resulting interest & dividends) I have for my three American children. It feels like we are being punished for saving for them. In any case, we are being punished for living abroad.

Your rules are worsening the economic safety of many American wives of foreign nationals since these men no longer want to give their wives signing powers over joint accounts, endangering their long term economic security. Several women I know have lost the kinds of joint signing powers that are normal & practical in an 'American' marriage.

Living abroad , one needs a local bank. But these local banks are refusing to work on American citizen accounts. I spent the past three years looking for someone to manage some investments and had to cross at least 10 institutions off the list because they no longer will work for an American citizen. My daughter, with her small savings, has had the same difficulty.

My checking account bank here only keeps the account because they have had it for so long. I have had to move the brokerage business because the brokerage considered the new US reporting requirements AND the investment restrictions to difficult to implement. (NO ETFs or mutual funds, etc since they are considered PFICS) The many hours of research , interviews & follow up required just to do normal banking has already become a huge burden on many ' normal' average Americans overseas. The tax reporting is becoming an expensive nightmare well beyond your 'time to fill out' estimates.

Worst of all, we are being discriminated against for choosing to live abroad- a scandal, considering that we are some of the country's most staunch and effective ambassadors.

Just because an American lives overseas, they should not be suspected guilty until proven innocent. The same reporting rules should apply to all Americans regardless of where they live. You do not ask in country living citizens for total net worth information. They do not have to send lists of highest balances on each their accounts. It is appalling, timeconsuming, & expensive, and putting Americans overseas at great disadvantage.

Short compliance deadlines have exasserbated the expense & confusion. The short timeframe for comments on 8938 (over the holidays when people should be spending time with their families) seem set to discourage comments.

Please send me a draft of the document by email immediately Please reconsider the necessity & fairness of these new requirements.

Best regards,

Margaret Nelson Spethmann

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

Concerns: Comments on Draft Form 8938

December 20, 2010

Dear Mr. Shields,

American Citizens Abroad (ACA), the Association of Americans Resident Overseas (AARO) and the Federation of American Women's Clubs, Inc. (FAWCO) are non-profit, non-partisan associations representing the interests of American citizens residing and working abroad. With more than 20,000 members in over 90 countries, including an umbrella network linking over 75 independent American, international volunteer organizations in 39 countries and a vast information network reaching out to the Americans community abroad, our organizations represent a forceful voice for Americans overseas. We appreciate the opportunity to present comments to the IRS on the draft Form 8938.

The community of overseas American citizens is by far the largest group of U.S. taxpayers directly and significantly impacted by the new Form 8938. It would be difficult to reside abroad without having at least one foreign bank account in your country of residence and in its currency. The majority of Americans residing abroad are long-term overseas residents, and therefore have investments, pensions, life insurance, etc. abroad.

The instruction for completing Form 8938 has not been issued. It is imperative that the deadline for comments be extended for a reasonable period (60 days?) after the instruction has been published and disseminated to those who have requested a copy. Our comments are based on incomplete information and are filed now solely to meet the posted deadline.

The FATCA legislation, in general, and Form 8938 which is the object of the present comments, in particular, are clear examples of discrimination against one group of American citizens - those residing abroad. FATCA is intended to catch tax evaders, a goal that our associations fully support. Imposing a significant reporting burden on the five million American citizens abroad is not the answer.

Three issues have an overall bearing on our stated position:

1. The Act requires taxpayers to report the highest value of foreign assets held during the year, the so-called high water mark. The absence of an IRS instruction to the contrary makes it an obligation on the taxpayer to calculate 365 days of value and 365 exchange rates.
2. There is no consideration given for the double accounting involved if an individual transfers funds during the year from one account to another account and the high water mark of each account is applied.
3. Some foreign investments do not report annually but only at the time of sale. Some pension funds may report value only upon retirement.

Practically, the reporting requirement under Section 6038 for foreign assets should be limited to year-end balances at the applicable year-end rates.

By the very nature of the FATCA requirement, assets are defined in foreign currencies, such as foreign bank accounts, foreign securities, etc. Consequently, it is only logical that **the reporting currency on Form 8938 should be the currency in which the assets are actually defined even if an additional column is provided for the translation into US\$ at the end of the year**, with one Form for each currency held. Reporting by currency would have three significant advantages:

- a. it would eliminate all of the issues linked to foreign exchange rates, as mentioned above;
- b. for the taxpayer, it would reduce the significant time and risk of errors when preparing Form 8938, as mentioned in Section B below;
- c. for the IRS agent, it would greatly simplify control or audit since the primary data are, by their very essence, expressed in foreign currencies.

Regarding your specific questions

- A. Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility**

Form 8938 is the first instance, to our knowledge, whereby the IRS requires information on assets from the taxpayer. The U.S. tax code taxes on income, not assets. Therefore, the collection of information on assets held abroad is not necessary for the proper performance of the functions of the IRS. This new filing requirement is part of the

FATCA legislation, aimed to track down tax evaders; the only possible use of the information on assets is to cross check the assets declared with the revenue reported on various foreign assets. This will lead to high administrative costs for the IRS, an unfair specific reporting burden for U.S. citizens residing abroad, ineffective audits and potentially unfair penalties for overseas Americans due to misinterpretation of the data or confusion among tax filers. Regardless, one must assume that a U.S. person who decides not to report certain income will be sure not to report the related assets. Hence, since the IRS taxes on revenue and not assets, the collection of the asset information will not enhance revenue collection. **Therefore, we see no practical utility in requiring this information.**

B. The accuracy of the agency's estimate of the burden of collection of information

The IRS has defined the burden of collection of information as follows:

*"Estimated Time per Respondent (to complete the form: 1 hour, 05 minutes
Estimated Total Annual Burden Hours: 378,000"*¹

The IRS estimate is grossly understated. First, the number of Americans residing abroad is estimated by the State Department to exceed 5 million. Based on this estimate and the IRS numbers of those filing Form 2555, Form 1116 and the FBAR, **the number of Americans affected by this new filing will probably exceed 2,000,000, more than five times the IRS estimate of 350,000.**²

We are not surprised by this very large discrepancy. The IRS has admitted in several instances that it does not really know the population of Americans residing abroad who should be filing reports. In fact, the Treasury Inspector General for Tax Administration report cited in Section E below states the following:

- The IRS will face the same problem with the new provision as it does with the FBAR provision as there is no easy method to determine what constitutes the potential population filing base.
- The new provision will be self-reported, similar to the FBAR. Therefore, persons trying to hide money abroad will open financial accounts in jurisdictions well known for their bank secrecy laws

¹ This translates into 348,932 tax filers, which estimate may be rounded to 350,000.

² In 2006, the most recent year for which data is available, the number of Americans filing Form 2555 for the foreign earned income exclusion, of which the great majority resides overseas, numbered 335,000. Another 969,000 Americans filed Form 1116 using the revenue category "General limitation income" which covers foreign social security payments, foreign pension payments received as well as earned income for those who opt to apply Form 1116 instead of Form 2555 or who have income in excess of the amount of the foreign earned income exclusion allowed under Form 2555. The IRS statistics do not report this data by residence but it is most likely that a significant percentage of this group resides overseas. In addition, close to 2,000,000 Forms 1116 are filed, mostly with passive income. Some of these filers may also be individuals who reside overseas and who have investments in foreign securities; many of those residing in the United States will have investments in foreign securities in excess of \$50,000 and will have to file Form 8938. Furthermore, the Treasury Inspector General for Tax Administration report mentions that in 2009, 534,043 FBAR reports were filed, which is already in excess of the 350,000 estimated reporting for Form 8938. The great majority of those filing the FBAR will have assets exceeding the threshold of \$50,000 required for Form 8938.

where they do not exchange information with the United States, making it unlikely that these accounts will ever be reported.

Based on our practical experience in reporting foreign currency revenues in US\$ for the IRS form 1040 and our analysis of the reporting requirements in Form 8938, the IRS estimate of the time burden of 1 hour and 5 minutes for completing Form 8938 is neither credible nor accurate. It may barely be enough to find the exchange rate(s) applicable to the reported assets on the reportable dates.

The IRS estimate grossly understates the complexities involved in reporting on all the classes of assets mentioned on Form 8938. To begin, let us mention five obvious reasons for our substantially higher estimate:

First, the confusion mentioned in Section E below will require significant time and effort just to understand what is to be reported under the four separate categories as well as the differences between Form 8938 and the FBAR (Kindly note that for the moment, in the absence of instructions, such understanding is impossible).

Second, the statutory requirement to file the highest dollar value in the year will lead the taxpayer into complex computations, as explained above. Furthermore, exchange rates vary over time. Just finding the applicable exchange rates may exceed the total time estimated by the IRS for completing Form 8938.

Third, Form 8938 requires individuals who have shares in companies not held within financial accounts to determine a value for such shares. What method is applicable – price paid, pro rata net asset value, estimated potential market value even though there is no market, etc.? Academic libraries contain entire shelves on these issues. The potential for error, litigation and penalties is enormous.

Fourth, Form 8938 requires individuals to determine the value of a life insurance policy, the value of rights under foreign social security programs, under collective savings accounts. These data may be known only annually, or perhaps only upon retirement.

Fifth, if an investor is a partner with others in a start-up venture, how does he value an investment which may be worth much less than the funds put into the venture?

The IRS has never before required American citizens to file such detailed information on assets. It is a highly complex requirement, given the technical issues raised and the level of detail involved. The fact that the IRS has not yet been able to produce instructions for Form 8938 testifies to the complexity. With the threat of penalties for inaccurate filing, Americans will be forced to use specialized tax preparers for guidance and help in completing the form. This will increase their compliance costs significantly, even for the many overseas residents who owe no U.S. taxes, because of the high taxes they pay locally. **In our estimate, the effort involved, in particular in the first years, will average hours of work or payment for professional support, rather than the one hour estimated by the IRS.**

Let us assume that two million Americans file Form 8938 and spend on average 10 hours completing the form. This amounts to 20 million hours, the equivalent of 500,000 man work weeks. Assume that on average a professional tax preparer is paid \$100 for one hour's work in finalizing Form 8938; this represents a cost of \$200 million for tax payers. Assume that the IRS time involved to collate, analyze, audit errors, check with other IRS forms and the FBAR form averages 1 hour per form; this amounts to 2 million man hours a year. At 1200 effective hours per IRS agent per year, this corresponds to 1,666 agents fully devoted to just Form 8938. At an average cost of \$100,000 per IRS agent, this amounts to \$166 million of IRS expense. **Such costs far exceed any potential additional tax revenue collection due to the filing of Form 8938.**

C. Ways to enhance the quality, utility and clarity of the information collected

Under Section E and F below, specific suggestions will be made with regard to Form 8938 itself.

As stated above, two important ways to enhance the quality, utility and clarity of the information are:

- to specify that the amounts reported are year-end balances, rather than high water marks, translated into U.S. dollars at year-end exchange rates;
- to report in the currency in which the foreign assets are actually defined.

Both proposals will eliminate major sources of confusion and errors.

However, our associations are of the opinion that 99.9% of the information collected from Form 8938 will be of no use to the IRS. If reporting on assets were to improve IRS performance in collecting taxes, it would undoubtedly have been included in the tax code years ago and applied to all American tax payers. And if this is not the case, why apply it today to overseas Americans? **Our conclusion is that Form 8938 is likely to be ineffective, i.e. is unlikely to improve the performance of the IRS.**

D. Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology

The best way to minimize the burden of the collection of information on respondents is to render inapplicable I.R.C. § 6038D and to eliminate the need for Americans to report foreign assets on Form 8938.

As for the potential in using automated collection techniques, this is an illusion since the type of information requested is not easily automated through electronic filing, particularly the information required under Parts B, C and D of Form 8938. Furthermore, the information required is defined and stored in local currencies and exchange rates are variable. According to the report of the Treasury Inspector General for Tax Administration, the IRS is still studying ways to try to computerize the FBAR report even though the FBAR has been in existence for many years, and yet the FBAR deals with a much more limited scope of assets.

Since Form 8938 will become an integral part of filing Form 1040, the inability to file electronically Form 8938 will make it impossible for all Americans residing overseas to file their Form 1040 electronically. This will lead to increased inefficiencies for the IRS.

Effective 1 January 2013, foreign banks and brokers will be required to report account values to the IRS. Since any report of value is only informational, why should both the foreign entity and the American taxpayer be required to report? The duplication is burdensome, costly and unnecessary.

E. The sources of confusion and the risks of errors

The confusion among overseas tax filers and potential errors in filing risks are very significant because Form 8938 is required in addition to TD F 90-22.1 (usually referred to as the FBAR Form), which has other criteria, a different threshold for reporting and must be filed separately to Treasury. In fact, the Treasury Inspector General for Tax Administration clearly highlighted the complexity and potential source of confusion in its report dated September 29, 2010 (Report no. 2010-30-125).

“Another problem is that many taxpayers will find that their filing requirements will not only have increased, but also become considerably more complicated as a result of the addition of I.R.C. § 6038D. For example:

- Taxpayers not only will be required to file the new information for I.R.C. § 6038D, but they may also be required to file an FBAR.
- Taxpayers may also find that certain terms are defined differently in the BSA regulations and the Internal Revenue Code. For example, the term United States is defined in the BSA regulations as *...the States of the United States, the District of Columbia, the Indian lands, and the Territories and Insular Possessions of the United States.*^[20] While in the I.R.C. it is defined as *“United States” when used in a geographical sense includes only the States and the District of Columbia.*^[21]
- Complexity will also be encountered because of the differences between the FBAR requirements and I.R.C. § 6038D; individual taxpayers in similar circumstances could have different reporting outcomes...

The following example demonstrates the potential differences in these two provisions:

Two individual taxpayers owning foreign stocks worth \$55,000 can end up with entirely different reporting outcomes. One taxpayer that owns \$55,000 in foreign stocks through a foreign stock brokerage account would be required to file both an FBAR and the I.R.C. § 6038D disclosure on his or her tax return, while the other taxpayer that held \$55,000 worth of foreign stocks issued by a person other than a U.S. person outside of a foreign financial account would only be required to complete the I.R.C. § 6038D disclosure on his or her tax return. In this example, if the amount the stock is worth is reduced from \$55,000 to \$45,000, the first taxpayer is only required to file an FBAR and the second taxpayer is not required to file a disclosure of any type.”

Our organizations would like to highlight other situations which will be a source of confusion for Americans residing abroad. For example:

- A stay-at-home mother who is an American married to a foreigner has just interest income of \$1,000 on her personal savings account which amounts to \$55,000, the amount saved when she worked prior to having a family. She also has signatory authority on her foreign husband’s current account as well as a credit card linked to that account. For the FBAR, she must file both accounts, as she has signatory authority over her husband’s account. For the I.R.C. § 6038D (Form 8938), does she have to file a 1040 even though her personal revenue is

below the income threshold for required filing, just to file for her one personal account of \$55,000? This example is not an exceptional case as half of the Americans residing overseas on a long-term basis cite marriage as the reason.

- An individual who has \$9,000 in a banking account abroad and a foreign life insurance policy worth \$45,000 will have to file Form 8938, since total foreign assets exceed \$50,000, but not the FBAR as the bank account is below \$10,000.
- An individual who has signatory authority as treasurer, but no financial interest in bank accounts of several charitable organizations abroad will have to report these on the FBAR, but not on Form 8938.

There will remain much overlap between the two reports, which means that American citizens residing abroad will have to file two separate reports, which are different, but which contain largely the same information. This creates a double administrative burden for the individual citizen as well as a double burden for the IRS, since it is the IRS which is administering the FBAR for the Treasury. There is also an increased likelihood that human error will lead to discrepancy in the forms, presenting an additional administrative burden to the taxpayer and to the IRS.

Confusion related to filing two reports can be highly penalizing as the IRS has stated: *“The IRS will use the information to determine whether to audit this taxpayer or transaction, including whether to impose penalties.”* The penalties allowed under I.R.C. § 6038D are severe and would probably be cumulative with penalties for inaccurate filing of FBAR. Overseas Americans who make errors with no intention of defrauding the IRS risk losing a good part of their savings through penalties and/or lawyers fees for defense. This need to report assets under threat of confiscation of those assets specifically discriminates against U.S. citizens residing abroad.

F. Specific comments on details of Form 8938

1. Title at top of the form: The comment “Attach to your tax return.....” should begin on the line below the title, not on the same line. Similarly, why is there the gap before “See separate instructions”?
2. Presumably the OMB and the Sequence numbers will be numbers in the final version.
3. Why do you have the text “Identifying number” instead of “Your social security number”, as is found on other forms for the 1040, including form 2555? Form 1116 uses the term “Identifying number as shown on page 1 of your tax form”. Even the TD F 90-22.1 (FBAR) uses the term “U.S. Taxpayer Identification number”. Just “Identifying number” will raise confusion in the minds of tax filers.
4. The tax filer is systematically referred to instructions with regard to Part A, B, C, D. The instructions should make very clear at the beginning the difference between the categories because a tax payer will wonder if he/she must list under Part B all stocks held in a financial account, which are already included in the totals of the statement of the financial institution listed under Part A. For Part C, instructions must list those contracts

which must be reported and those which do not need to be reported. For Part D, what is meant by a foreign entity? What makes it different from any “stock or security issued” as defined under Part B? What is the distinction between Part C and Part D, particularly since both apply the term “interest”?

5. In the four boxes, you have “Maximum valueduring taxable year.” As we have already commented above, it is practically impossible for the tax filer to know how to reply. The tax payer does not have a daily value of investment positions and the US\$ changes in value every day. The instructions should make the filing requirements very clear and there should be a footnote reference on the form itself that the definition of maximum value is defined in the instructions. As we have stated above, applying the year end foreign currency values translated into dollars at the year end U.S. dollar rate is the only practical possibility.

The term “taxable year” also raises more questions. Is the term “taxable year” defined in the instructions? Does this correspond to the calendar year? This question is raised because Form TD F 90-22.1 uses the term “Maximum value of account during calendar year reported”. Since those who file Form 1040 jointly with this new form will also have to file TD F 90-22.1, consistency in terms would be most helpful. Additionally, our organizations have asked several professional tax filers if the first “taxable year” is 2010 (due to be reported April 15, 2011) or the following year, and we have received varying opinions - even the professionals are not clear as to when the reporting requirement commences. And the IRS office in Paris has refused to take a stand on this simple issue.

6. Very little space is provided for the Name of financial institution, Name of the issuer, Name of counterparty of instrument, contract or interest. On the TD F 90-22.1, a whole line is allowed for the name. Similarly the space allotted for the address is very restrained; in contrast, the TD F 90-22.1 has five separate boxes devoted to the address – Mailing address; City; State, if known; Zip/postal code, if known; country. Under Part B, the “Description of stock or security by class, issue or type” also has insufficient space; imagine, for instance, trying to fit in “6 5/8 % convertible subordinated bond, series B, due Oct. 17, 2019” in the box. The form as currently presented does not lend itself in any way whatsoever to electronic filing. In fact, the only way that the current format will allow individuals to complete the form in a readable fashion would be if the form would allow wrap around text in each box – which is most unlikely as such forms are always PDF. Under Part C, the box “Description of other instrument, contract or interest” allows a little more space, but is still most likely inadequate. Under Part D, “Description of interest held in foreign entity” the space allotted is totally inadequate.

7. In Part D, “foreign” is misspelled as “foreing” in the box concerning Maximum value.

8. The average taxpayer residing overseas will have no idea why all of a sudden Form 8939 must be filed. It would be helpful for the taxpayer if Form 8938 mentioned that I.R.C. § 6038D in the tax code since March 2010 requires filing Form 8938 starting the fiscal year 2010 or 2011, whichever is applicable.

Conclusion

We thank you for this opportunity to express our comments on the proposed Form 8938.

While we have attempted to provide constructive comments at all levels, we would like to conclude by stating that Americans residing abroad represented by our organizations are convinced that the entire FATCA legislation, including the additional reporting requirements for U.S. persons to file Form 8938 with the 1040, will have serious negative repercussions for the United States economy in general and for American citizens residing abroad in particular.

- Requiring Form 8938 in addition to the FBAR is a total overkill on the part of Congress. This will lead to significant inefficiencies within the IRS and high compliance costs for American citizens. Regrettably, it will almost certainly lead to non-compliance on the part of many and the resulting loss of available information about them at all.
- The penalties outlined under I.R.C. § 6038D (d) for not reporting on time are confiscatory with the systematic increase in penalty beyond a 90-day delay up to \$50,000. Many individuals overseas who currently do not file the 1040 because their income is below the filing requirement threshold will ignore the new asset reporting requirement and will be vulnerable to unjustifiable and unfair penalties. Is the purpose of the IRS to collect penalties or to collect taxes?
- I.R.C. § 6038D (g) then states: *“No penalty shall be imposed by this section on any failure which is shown to be due to reasonable cause and not due to willful neglect. The fact that a foreign jurisdiction would impose a civil or criminal penalty on the taxpayer (or any other person) for disclosing the required information is not reasonable cause.”* Such a statement not only reflects total disdain for the rest of the international community, but also places American citizens residing overseas in an untenable position, particularly in those countries where privacy laws preclude requiring this type of information.
- Looking beyond the specific requirements of Form 8938, our organizations are particularly concerned by the numerous and insidious forms of discrimination, all linked to the FATCA requirements, that have recently appeared against Americans; for instance:
 - Foreign insurance companies are already beginning to refuse to issue life insurance policies for American citizens.
 - Foreign banks are refusing to have American clients with investment portfolios; some even refuse to open current accounts for Americans.
 - The reporting requirements under FATCA with regard to partnerships and shares held in companies owned outside of financial institutions will seriously engender prejudice for the United States as well as for its citizens residing abroad. Americans will no longer be invited to join

foreigners in start-up companies overseas, as just 10% American ownership requires IRS reporting on the partners and the company.

- American citizens and hence American businesses are becoming pariahs in the international banking world, at a time when the U.S. aims to double its exports. FATCA reduces the competitiveness of U.S. companies in the global market place.
- Many foreign financial institutions will refuse to enter into agreements with the IRS for the filing requirements of those institutions. They will consequently disinvest their U.S. securities and will encourage their foreign clients to do the same. This is already occurring in Switzerland and Japan, for example, and banks located in the European Union have signaled that FATCA legislation is contrary to European legislation and have placed reserves on their participation in the program.
- Foreign financial institutions which do not enter into an agreement with the IRS to be a registered FFI will create a second tier of foreign financial institutions that will work outside of the framework of the U.S. dollar. U.S. persons who want to evade U.S. taxes will be welcome in such institutions. The Chinese will be delighted to have this encouragement to create a non-U.S. dollar trading zone.
- FATCA engenders one of the most self-destructive programs for the economic welfare and future of the United States ever devised by Congress.

ACA, AARO and FAWCO strongly recommend not only seriously revising Form 8938, but also question its usefulness in terms of information collected, IRS efficiencies and tax filer compliance. The IRS should encourage Congress to repeal FATCA legislation and the related filing requirement for Form 8938.

Sincerely yours,

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Executive Director

John Flint
President

Lucy Stensland Laederich
U.S. Liaison

DRAFT FORM xxxxx -STATEMENT OF FOREIGN FINANCIAL ASSETS

Form **8938**
(Rev. July 2010) Dept. of
the Treasury Internal
Revenue Service

Statement of Foreign Financial Assets >Attach
to your tax return if you owned specified foreign financial assets having an
aggregate value of more than \$50,000. >See separate
instructions.

OMB No. 1545-xxxx

Attachment
Sequence No. **XXX**

Name(s) shown on your income tax return

Identifying number

Important: Fill in all applicable lines and schedules. All information **must** be in English. All amounts **must** be stated in U.S. dollars unless otherwise indicated.

Complete Part A if you held any interest in any financial account maintained by a foreign financial institution during the taxable year (see instructions), **and**

Complete Part B if you held any interest in any stock or security issued by a person other than a United States person (see instructions), **and**

Complete Part C if you held any interest in any financial instrument or contract held for investment that has an issuer or counterparty which is other than a United States person (see instructions), **and**

Complete Part D if you held any interest in a foreign entity (see instructions).

Part A. Schedule of any financial asset maintained by a foreign financial institution (see instructions).

Name of financial institution	Address of financial institution	Financial account number	Maximum value of account during taxable year
Draft			

Part B. Schedule of any stock or security issued by a person other than a U.S. person (see instructions).

Name of issuer	Address of issuer	Description of stock or security by class, issue and type	Maximum value of stock or security during taxable year

Part C. Complete blocks (a) through (f) with schedule of any other instrument, contract or interest (see instructions).

(a) Name of issuer	(b) Address of issuer	(c) Description of other instrument, contract or interest
(d) Name of counterparty of instrument, contract or interest	(e) Address of counterparty	(f) Maximum value of other instrument, contract or interest during taxable year

Part D. Schedule of any interest in a foreign entity (see instructions).

Name of foreign entity	Address of foreign entity	Description of interest held in foreign entity	Maximum value of interest in foreign entity during taxable year

Cat. No 37753A

Tatyana Schmidt, 2, impasse de la Maîtrise – 71400 Autun, FRANCE
Ellen Schmidt, 61, rue de la Grange aux Belles – 75010 Paris, FRANCE
MEMBERS OF AARO, France

Mr. Gerald Shields
IRS, Room 6129
1111 Constitution Avenue, NW,
Washington DC 20224

Subject: Draft Form 8938

Paris, 20 décembre 2010

Sir,


In reply to the Internal Revenue Service's call for comments on the draft of the new tax form 8938 destined to be filed as part of the individual income tax return of certain US tax filers, you will find hereafter our observations.

- The threshold doesn't comply with the Foreign Earned Income Exclusion (form 2555-EZ) stated for the 2009 tax return, which is 91,400 USD.
- Moreover, this threshold seems low since the current exchange rate would set this threshold for US tax filers in Europe at approximately 38,000 Euros.
- The information requested will significantly increase the amount of data required to file a tax return for expatriates or persons holding assets abroad as well as impose additional record-keeping and reporting obligations on Americans filing tax returns from overseas.
- Furthermore, these processes will, in and of themselves, place yet another heavy burden on the American tax payer with no clear instructions to date, not to mention the fact that banks abroad will consider doing business with Americans living abroad as a liability.
- What about Financial Privacy? Is the collection of such data necessary for the proper performance of the functions of the IRS, including whether the information shall or shall not have practical utility?
- How can expatriates be sure that any data provided is protected from public exposure such as the WikiLeaks scandal?
- We Americans living abroad consider ourselves as "unpaid Ambassadors" representing our country in a variety of positions and capacities as well as positively characterizing and defending our country's political and social positions.
- The goodwill we thus create will be jeopardized.

We would like to add that I, Tatyana Schmidt, a senior US citizen and mother to Ellen D. Schmidt, do not qualify for Medicare due to the fact that I reside abroad and what is more, am subject to double taxation .

Yours truly,


Tatyana A. Schmidt


Ellen D. Schmidt

Mme P. Kaas

Paris, 23 December 2010

Mr. Gerald Shields
IRS, Room 6129
1111 Constitution Avenue, NW
Washington DC 20224 USA

RE: Proposed form 8938

Dear Sir,

As an American living permanently in France, I have recently learned of the IRS plans to ramp up the reporting obligations of US citizens residing overseas on their foreign financial assets. I understand you are collecting feedback on the Draft Form 8938.

Part A of Draft Form 8938 duplicates FBAR information but offers much less and inadequate space. Completing the FBAR (Form 90-22.1) has already been quite cumbersome to the US taxpayer living abroad in that there is no simpler way to find the required information than by poring over a year's worth of account statements. Maximum value of an account over a year's period is not a figure readily obtained. Moreover, I wonder what useful information can be gleaned from this exercise when account balances naturally change as salary, pension or dividends are paid in and living and tax expenses are paid out. Currency conversion into US dollars skews the information even further. Why wouldn't the lowest account balance be as interesting to the IRS as the highest? What do you think your highest account balance says about you, Mr. Shields?

Parts B, C and D of proposed Form 8938 demand extensive detail on other foreign financial interests, and the space allotted to provide this information is also severely inadequate. Some French financial instruments and business structures have no precise US equivalents so defy accurate description in anything less than several paragraphs.

Itemizing stocks in Part B could quickly become unwieldy and several pages would be necessary. In such volatile market conditions it would seem fair (by which I mean, as futile and invasive) to invite notation of the lowest value of one's stock portfolio along with the highest. Again, more space would be needed.

Moreover, notwithstanding the added and significant burden on the taxpayer to list each stock and painstakingly review its performance history to determine its highest value over the taxable year, is the IRS really prepared to review all this additional information from the estimated 5 million US citizens living abroad?

For my part, I cannot begin to fathom the number of hours the US taxpayer resident abroad would have to devote to collecting this particular and peculiar data and the professional fees he would incur for help completing this Kafkaesque Form 8939. Frankly, this looks a lot like harassment.

Yours sincerely,



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

PTIN: P00155590

1/19/2011

Telephone direct dial: 011 33 1 47 05 01 52
Fax direct: 011 33 1 47 05 56 48

1 rue de Villersexel
75007 PARIS, FRANCE

----- 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 a 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

PTIN: P00155590

Telephone direct dial: 011 33 1 47 05 01 52

Fax direct: 011 33 1 47 05 56 48

1 rue de Villersexel
75007 PARIS, FRANCE

Terry Ralph M

From: Penny Reider [penny@ustaxexpat.com]
Sent: Tuesday, January 11, 2011 12:17 PM
To: Terry Ralph M
Cc: Paul Tansley
Subject: [spam] Form 8938
Follow Up Flag: Follow up
Flag Status: Orange

Dear Mr Terry,

I work for a tax professional and I have some questions regarding the proposed Form 8938 (Statement of Foreign Financial Assetts).

Could you please advise me when this form will be in circulation. Should we be gathering information from our clients with a view to this form being included in the 2010 returns.

Regarding part A of the draft will this include pensions, iinsurance & foreign retirement.

I have been able to find a draft of the form online but no instructions appear to be available, if possible could you please e-mail me a copy so that we can be prepared should the form be placed into service for the 2010 tax return.

Best Regards

Penny Reider
281 361 3136

Terry Ralph M

From: Rebecca Sullivan Voelker 92 [Rebecca.Sullivan.Voelker.92@Alum.Dartmouth.ORG]
Sent: Monday, January 03, 2011 8:02 AM
To: Terry Ralph M
Subject: IRS Form 8938 - For transmission to Mr. Gerald Shields

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

Dear Mr. Terry,
Thank you for your assistance in this matter.

Dear Mr. Shields,

I am responding to the request for comments regarding the proposed IRS Form 8938 - Statement of Foreign Financial Assets. As one of the over 5 million Americans living overseas, I ask your office to reconsider implementing this onerous and invasive requirement.

My family already files yearly tax declarations with the IRS, which naturally includes income derived from investments and savings in German and American institutions.

Requiring account information and balances on our German accounts would not only represent a significant repetition of the labor already required by the Treasury for TD F 90-22.1, but also be a deep invasion of the privacy of our financial matters. Dishonest filers would simply leave accounts unreported, as they are probably already leaving income unreported, while honest filers would be subject to unwarranted scrutiny. Americans residing in the US, who naturally have almost all their financially accounts in American institutions, are not required to provide this information in their tax returns, so I must ask why should Americans residing abroad be?

I would like to raise the additional point of personal data security for your consideration. Filing from an overseas location means that we must entrust our tax documentation to local mail services (instead of, for example, being able to file over a secure electronic connection). Requiring us to include detailed information, including account numbers, for our accounts worldwide represents an opportunity for data and identity theft with serious consequences for law-abiding Americans. Additionally, recent high-profile cases of data loss or theft from credit card firms, large corporations, and even the US government raises the question of how securely the IRS could maintain this most private of data.

Very few Americans move overseas to avoid payment of U.S. federal taxes (and those that do, don't move to Germany). I urge you to realize that the burden and risk this requirement would place on expatriate Americans far outweighs any modest benefit to the IRS in tax collection.

Should you have any further questions, I can be reached at the sending email address, or at the below street address.

Sincerely,
Rebecca Sulllivan Voelker

Am Domacker 46
47447 Moers, Germany

Richard JOHNSON

3, Avenue Emile Acolas

75007 PARIS - France

Paris, December 22, 2010

Mr. Gerald Shields
IRS Room 6129

Dear Mr. Shields

I have reviewed the draft proposal for Form 8938 Statement of Foreign Financial Assets and am writing to express my strong opposition to this additional burden on expatriate American citizens. America is the only country to require its citizens living in a foreign country to file annual tax returns. Normally this would not be a problem because our local taxes are higher than the US ones. However because the US tax code is hundreds of pages filled with loopholes & special provisions, it is impossible for a normal citizen to fill it out properly. I have an engineering degree from RPI and an MBA from Harvard but it is far too complicated for me and I am obliged to pay a tax professional \$2,000 each year to prepare my return which is at least 50 pages just to prove I owe nothing. In contrast my French return is just 6 pages and it takes me only 30 minutes to fill in the blanks.

We are already required to list all our significant financial assets under threat of serious fines and financial sanctions. The draft form duplicates this data but requires a huge amount of details. My wife & I have lived in Europe for 43 years and all our financial assets were earned here and have been subjected to local and US taxes. We are in our 70's and have been retired now for 3 years. We each have stock accounts with 15 to 20 different stocks each that we trade regularly plus other investments which we also report to the Treasury. Reporting all these transactions as required in the draft form would be a significant and unnecessary burden. It has gotten to the point that we, like many of our fellow expatriates, are considering applying for French citizenship. The health care is first class and costs half as much as in the US. It's a tempting alternative.

Yours sincerely,

Richard Johnson

Mr. Gerald Shields
IRS, Washington, DC

OMB# 1545-2195

4137 Oxford Ave
Montreal, QC, Canada H4A 2Y5
Nov. 30, 2010

Dear Mr. Shields,

This letter is in response to the IRS request for comments on the proposed draft of Form 8938, *Statement of Foreign Financial Assets*.

I am a college physics teacher. My wife and I are US citizens who have lived and worked in Canada for over forty years. We have scrupulously complied with the increasingly onerous US tax reporting and filing requirements, including the new FBAR forms, Forms 8891, etc. Since our assets in Canada exceed \$50,000, we will now have to complete the new Form 8938.

As I'm sure you realize, Form 8938 is largely (though not entirely) a duplication of the FBAR form. Moreover, 8938 asks for essentially the same information as Form 8891 (relating to Canadian retirement plans, and already redundant with FBAR), and there is much overlap with Form 3520 (foreign trusts). I am beginning to wonder if Congress and the IRS mean to smother overseas Americans with so much paperwork that they will either have to return to the US, or give up their citizenship. To quote one lawyer's reaction, "Redundancy redundancy is is good good". In this light, it is astonishing to see so much additional redundancy within Form 8938 itself.

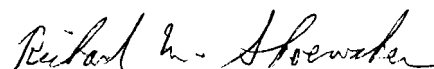
Specifically:

- a) Part A refers to "financial assets", but also to "financial accounts". What about securities accounts? These accounts may contain foreign stocks and bonds. Are we to report the accounts, and then report as well the assets within those accounts? And that's just in Part A. Part B asks for a list of separate stocks and bonds. If these are contained within the accounts reported in Part A, must they be listed again in Part B?
- b) In part C, what exactly is an "other instrument, contract or interest"? I trust that clear instructions are forthcoming. And in Part D, an "interest in a foreign entity" could, it seems to me, include everything already reported in Parts A, B and C! Are we to report these all a second or third time?

The FATCA law is a perfect example of unintended consequences. It's supposed to crack down on tax cheats, but I suspect most of those cheats are far too smart to be caught. The real burden of the law will fall on the millions of honest Americans who live and work overseas, and who have foreign accounts and assets as an ordinary part of their daily lives. I see no evidence that IRS understands their problems, nor that it is making any effort to alleviate their outsized paperwork burden.

Specific recommendations:

- 1) Get rid of the FBAR, Form 8891 and possibly also Form 3520, and fold them into Form 8938. Form 8938 could have extra schedules, to be used by those having unusual or complex assets.
- 2) Get rid of the confusion and redundancy within Form 8938 by writing clear and simple instructions.
- 3) Bring in regulations that significantly reduce the filing burden for those Americans who live abroad, and who have accounts in the foreign countries where they reside. There could be a requirement of residence for some specified number of years before filing relief kicks in. Plainly, there is little likelihood that such accounts would have been set up to evade taxes.



Richard M. Shoemaker

CLAYTON

FINANCIAL AND TAX

PO Box 15744 Irvine CA 92623-5744

Form 8938

OMB # 1545-2195

December 17, 2010

Mr. Gerald Shields
Internal Revenue Service
Room 6129, 1111 Constitution Ave NW
Washington, DC 20224

Re: Proposed Statement of Foreign Financial Assets

Dear Mr. Shields:

I am writing regarding the proposed Statement of Foreign Financial Assets, Form 8938. Your request for comments noted,

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

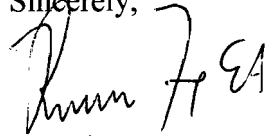
There is a far simpler and easier method for the IRS to obtain the necessary information than adding the proposed Statement of Foreign Financial Assets: Have the current FBAR (Form TD F 90-22.1) submitted *with the tax return rather than being sent to the Detroit Computing Center with a different deadline*. There would be numerous benefits to the IRS and the public if this were adopted rather than the proposed Statement of Foreign Financial Assets:

1. Improvements with the quality of the information collected. Today, many taxpayers are (a) unaware of the requirement to file the FBAR and (b) are unaware that the deadline for this form is June 30th (rather than the due date of the tax return). Converting the FBAR so that it is filed with the tax return (with a due date of April 15th or October 15th (with a valid extension) would make lives far easier for the public, tax professionals, and the IRS.
2. Lessening of Paperwork Burden. By not adding a duplicative Statement of Foreign Financial Assets (the information being requested is almost identical with the FBAR) the paperwork burden would not be increased.
3. More information available to the IRS. The IRS would be able to track information on all taxpayers filing FBARs.

The only burden that I see is developing a method for the FBARs to be sent to FINCEN. While there would be a cost involved, it should be relatively easy to design such a system.

What I propose will greatly enhance compliance with the current FBAR requirements and will assist the IRS in selecting whether to audit a taxpayer or transaction with minimal to no additional burden on the public. I urge the IRS to adopt this rather than burden tax professionals and the public with a duplicative Statement of Foreign Financial Assets.

Sincerely,

A handwritten signature in black ink, appearing to read "Russell Fox, EA". The signature is stylized and written in a cursive-like font.

Russell Fox, EA

Terry Ralph M

From: Sally Warren [warrensally@wanadoo.fr]
Sent: Monday, January 03, 2011 10:53 AM
To: Terry Ralph M
Subject: Re: Form 8938 Statement of Foreign Financial Assets
Follow Up Flag: Follow up
Flag Status: Blue

Dear Mr. Terry,

I offer the following comments on proposed Form 8938 of Foreign Financial Assets:

1. Part A appears to request the same information as required by the existing Treasury Form. It is a little difficult to track the maximum value of a savings account that does not provide regular statements; however, this is a minor point compared to Part B.
2. Schedule of any stock or security issued by a person other than a U.S. person -

1/19/2011

name, address, description of stock or security by class, issue and type, maximum value during taxable year. In the case where one's funds are under management, one does not have regular access to all the requested information. As part of my reason for having funds managed is to save myself the time involved in managing the a/c myself, this request would be burdensome especially in the case of an actively traded account. And, in due course, it would undoubtedly lead to increased fees from brokerages / investment managers who would ultimately have to provide the requested information.

3. Setting "the aggregate value at more than \$50,000" does not strike me as the best approach. It might be better to set an individual holding limit or raise the aggregate amount.

4. Whereas the existing Treasury Form is required of anyone having signature authority over a foreign bank account, which in most cases would be expatriates, the new form appears to require anyone whether expatriate or not to complete the form. I believe it should be required of anyone with foreign assets, otherwise it would discriminate against expatriates. Most U.S. expatriates I know keep their investments in U.S. markets. In a global world, this form seems to be trying to get Americans to keep their assets in the U.S. domestic markets. That would be foolish from an investment point of view with an eye on diversification.

5. It is not clear to me what the aim of tracking such information is. I would rather the U.S. close a loop hole I see in Social Security payments - spousal payments to non-Americans married to Americans in the case where the American files singly (not jointly) to avoid declaring the spouse's income. I do not myself like having my tax dollars go to making payments to husbands of friends who have never contributed to the U.S. Social Security System and who have never paid a \$1.00 of tax to the U.S. At a minimum, for such non-American spouses to qualify for spousal social security payments, there should be a pre-requisite that the American and non-American spouse file a 1040 jointly.

Sally Warren

On 15 déc. 10, at 21:48, Terry Ralph M wrote:

Ms. Warren,

In response to your request we are providing you with a link to the Form that was submitted as part of the Proposed Collection. The link below will download a PDF of the Form 8938.

<http://www.reginfo.gov/public/do/DownloadDocument?documentID=202248&version=1>

Thanks

Ralph M. Terry
Tax Analyst, Tax Forms and Publications
Special Products Section

202 622 8144 | SE:W:CAR:MP:T:T:SP | Internal Revenue Service | OMB Unit | 1111
Constitution Ave, NW, Washington, DC 20224 | Room 6129

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

From: Sally Warren [<mailto:warrensally@wanadoo.fr>]
Sent: Tuesday, December 14, 2010 3:48 PM
To: Terry Ralph M
Subject: Form 8938 Statement of Foreign Financial Assets
Importance: High

Dear Mr. Terry,

Please send me a copy of the subject draft form. I should like to comment on it prior to January 3, 2011.

1/19/2011

Thank you.

Sally Warren

SMITH CARMICHAEL CONSULTING

MEMORANDUM

Date: December 27, 2010
To: Mr. Gerald Shields
From: Gregory Smith

Dear Mr. Shields,

As requested, please find below comments on the draft Form 8938.

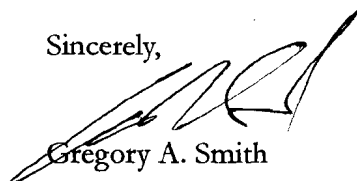
1. The form has a lot of potential for identity theft if put in the wrong hands - **Suggestion - only report the last 4 digits of the bank account number.**
2. Part B - Are you saying to report an inventory of all stocks held in foreign brokerage accounts? If so, this would cause undue hardship in the amount of time it would take to gather this information and report it on this form, whereas the maximum value amounts would all ready presumably be reported in Part A. **Suggestion - Remove Part B**
3. The \$50,000 threshold is too low and would require far too much work for too many taxpayers not to mention the resources required by the IRS to administrate the forms. Raising the threshold would reduce the burden on the taxpayer and the IRS without any material loss in benefit or information. **Suggestion - Increase the \$50,000 aggregate value to something more material e.g. \$500,000.**
4. Since all of this information can be obtained by the IRS through diplomatic channels with countries that have signed bi-lateral income tax treaties, the form should only need to be completed for financial accounts in jurisdictions that have not signed a bi-lateral income tax treaty. **Suggestion - eliminate the requirement of filing this form if all bank accounts are held in the taxpayers country of residence and the resident country has entered into a bi-lateral treaty arrangement for the sharing of information.**
5. Reporting the maximum value in each account represents an inordinate amount of research time for the taxpayer with no real value to the number reported, since the maximum value during the year could include transfers from various accounts. **Suggestion - to replace the maximum value with thresholds of maximum value. For example check the box: \$500,000 - \$1,000,000 - \$1,000,000 - \$1,500,000 over \$2,000,000 etc**

DECEMBER 27, 2010

6. The redundancy in the questions on the form is shocking. Nearly every question on the form is a duplicate to a question or information all ready required to be filed by a taxpayer. **Suggestion - Eliminate the FBAR (TD F 90-22.1) form and let this form replace it since it will be part of the tax return with presumably the same due date as the tax return which will allow tax preparers to help clients report accurate information in a timely manner. Remove Part D since this is all ready required on Forms 5471 and Forms 8865.**

Please feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'G. A. Smith', written over the printed name.

Gregory A. Smith

Mr. Shields:

December 17, 2010

I am a United States citizen living in the country of France. I have recently reviewed a draft copy of the proposed form 8938 - STATEMENT OF FOREIGN FINANCIAL ASSETS and have the following comments.

Living in a foreign country already brings its own set of challenges. Having to adjust to a different cultural, learn a foreign language and submit the mountain of paperwork required by the foreign country in order to stay is stressful in itself.

By living in France we are required to file both a US Income Tax return as well as an Income Tax return in France. As you know, filling out and filing a US income tax return requires many, many hours. Add to it the additional time to prepare and file a French tax return causes one to have considerable time just in filing income tax returns for the two countries.

In my review of this new form I don't find the information that is being gathered to be of significant benefit to the US government. With all the paper work that is currently being filled out by US citizens living abroad I find additional forms unnecessary. Here are just a few that I was able to find on the irs.gov website:

Form TD F 90-22.1 - Report of Foreign Bank and Financial Accounts

Form 5471 - Information Return of U.S. Persons With Respect To Certain Foreign Corporations

Form 3520 - Annual Return to Report Transactions with Foreign Trusts and Receipt of Certain Foreign Gifts

Form 8865 - Return of U.S. Persons With Respect to Certain Foreign Partnerships

In my opinion, an additional form that is estimated to take a little over an hour to complete, is repetitive, unnecessary and unwanted.

Thank you for your time.

A handwritten signature in black ink that reads "Stephen M Hughey". The signature is written in a cursive, slightly slanted style.

Stephen M Hughey

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.

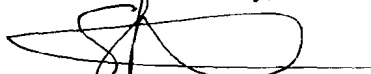
When I was young every overseas American I knew complied with all IRS requirements. I can assure you that today that isn't so. Many overseas Americans don't even know of their duties; the 90-22 is news to them!! Some file a 1040, others imagine themselves in compliance insofar as they honestly file and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

A handwritten signature in black ink, appearing to be 'SJS', written over a horizontal line.

Stephen J. Schneider

13 Kalograion Street, 1021, Nicosia, Cyprus. andarrios2@gmail.com

formerly:

Financial Controller

Atlantic & Schneider Ltd (Jersey, Channel Islands)

Partner

Bolter, Schneider & Cie (Bordeaux, France)

Chairman

The Octagon Wine Company (Richmond, UK)

CEO

The Schneider Corporation (Cambridge, Mass.)

Stephen Woynar
14 Allée de la Cauvinière
78112 Fourqueux, France

January 2nd, 2011

Mr. Gerald Shields
IRS
Room 6129
1111 Constitution Avenue
NW Washington, DC 20244
U.S.A.

Dear Mr. Shields,

I have been informed by the Association of Americans Resident Overseas of Paris, France that the Internal Revenue Service is soliciting comments on the draft of Form 8938 as "part of its effort to reduce paperwork and respondents burden".

I wish to comment as follows:

- 1) Is there a real practical need for requesting the information on Form 8938 which appears to be already covered to a large extent in Form TD F 90-221 which is already filed by Americans filing tax returns from overseas?
- 2) I am also in favor of minimizing the burden of record-keeping and the collection of information on respondents.

I wish to thank you considering the above thoughts about Form 8938..

Sincerely yours,

A handwritten signature in black ink, appearing to read "Step Woynar", followed by a horizontal line.

Stephen Woynar

Dear Mr. Terry:

Thank you for today's discussion and help.

My questions related to form 8983, to 6038d and to next years required information regulations for form 1040 and for small corporate entities [where one or two people own the corporation].

What is deemed a reportable asset?

Would you provide an answer on each of the following

1. a taxpayer purchased a building lot in a foreign nation in his or her personal

name and that lot or the house and lot in the foreign nation together exceed \$50,000 in estimated current value but are shown on the rolls of the foreign nation for real estate tax purposes as less than \$4,000 and the taxpayer paid

only a few dollars for the lot in 2010.

Lets say

1a. the taxpayer paid \$90,000 for it; its estimated value is now \$50,000 and the official tax register of the foreign country shows its value as \$4,000.

1b. the taxpayer paid \$4,000, its estimated market value at \$50,000 and the foreign country tax rolls show it at \$200,000

etc.

How should such an asset be classified and how should the value of such an asset be reported?

2. I understand that in many foreign jurisdictions, real estate is sometimes purchased in

a corporation or other entity, which itself might be incorporated in a second foreign jurisdiction. When this occurs the question of how to classify the asset for the different sections of form 8983 become an issue. Where can a taxpayer seek asset

classification and valuation advise for filing purposes of the act?

2a. A U. S. Taxpayer, purchases real estate in a foreign jurisdiction A, but the

ownership is not fee simple, instead it might be as tenants in common with a foreigner because of foreign ownership laws, or the taxpayer ownership might be represented in a stock, designated rights security, etc..

2b. A developer instead of subdividing the land into lots merely provides ownership

to the purchaser based on a certificate to rights within the developed community and sometimes those rights are merely life estate rights.

The only value of the property obtainable is the purchase paid price, and the

continuing value of the shares are anyone's guess, there may be recording of the sale in the country in which the real estate is sited or it may not.

How would such ownership be classed and how reported on form 8983?

In other words, does the purpose of the purchase affect the requirement to report.

Which evaluation methods is required, preferable, and which are allowed and must a taxpayer reevaluate the value of the holding every year?

Please provide a copy with instructions of the form 8983.

This area of practice is not well known to many accounting practitioners. I am wondering if the IRS would consider commissioning the development of a CPE interactive digital instructional program for practitioners to use to develop expertise in this area of concern.

I would like to talk with the service about opportunities in producing it such a route to educating practitioners and affected taxpayers about this new requirement is considered.

written by

Sterling Stoudenmire, III CPA

Tatyana Schmidt, 2, impasse de la Maîtrise – 71400 Autun, FRANCE
Ellen Schmidt, 61, rue de la Grange aux Belles – 75010 Paris, FRANCE
MEMBERS OF AARO, France

Mr. Gerald Shields
IRS, Room 6129
1111 Constitution Avenue, NW,
Washington DC 20224

Subject: Draft Form 8938

Paris, 20 décembre 2010

Sir,

In reply to the Internal Revenue Service's call for comments on the draft of the new tax form 8938 destined to be filed as part of the individual income tax return of certain US tax filers, you will find hereafter our observations.

- The threshold doesn't comply with the Foreign Earned Income Exclusion (form 2555-EZ) stated for the 2009 tax return, which is 91,400 USD.
- Moreover, this threshold seems low since the current exchange rate would set this threshold for US tax filers in Europe at approximately 38,000 Euros.
- The information requested will significantly increase the amount of data required to file a tax return for expatriates or persons holding assets abroad as well as impose additional record-keeping and reporting obligations on Americans filing tax returns from overseas.
- Furthermore, these processes will, in and of themselves, place yet another heavy burden on the American tax payer with no clear instructions to date, not to mention the fact that banks abroad will consider doing business with Americans living abroad as a liability.
- What about Financial Privacy? Is the collection of such data necessary for the proper performance of the functions of the IRS, including whether the information shall or shall not have practical utility?
- How can expatriates be sure that any data provided is protected from public exposure such as the WikiLeaks scandal?
- We Americans living abroad consider ourselves as "unpaid Ambassadors" representing our country in a variety of positions and capacities as well as positively characterizing and defending our country's political and social positions.
- The goodwill we thus create will be jeopardized.

We would like to add that I, Tatyana Schmidt, a senior US citizen and mother to Ellen D. Schmidt, do not qualify for Medicare due to the fact that I reside abroad and what is more, am subject to double taxation .

Yours truly


Tatyana A. Schmidt


Ellen D. Schmidt