

A dark wood desk with a blue pen and a brass object.

**A Tax Wake up Call for  
Americans with  
Unreported Assets  
and/or Income**

*By*

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- Masters in Tax Law from New York University Law School
- Four years of U.S. Tax Court and Internal Revenue Service experience in Washington D.C.
- The firm regularly works with law firms, accountants, businesses and individuals struggling to find their way through the complexities of the tax law.
- In short, the firm is a valuable resource to each of these audiences.
- With over 38 years as a tax lawyer in Florida, Lehman has built a tax law firm with a national reputation for being able to handle the toughest tax cases, structure the most sophisticated income tax and estate tax plans, and defend clients before the IRS.



THIS SECTION:

# Foreign Account Tax Compliance Act (FATCA)

**Beginning taxable year 2011**

1. U.S. Voluntary Disclosures
2. All Foreign Financial Assets Reported

# The United States Taxpayer Required Reporting **U.S. Voluntary Disclosures**

1. Income Tax Return
2. Estate Tax Return
3. Gift Tax Return
4. FBAR Reporting - All Foreign Bank Deposits
- 5. Foreign Account Tax Compliance Act (“FATCA”) – All Foreign Financial Assets Reported. (Beginning taxable year 2011)**
6. Form 1099
7. Form W-2
8. Information Returns – Numerous



# Reporting Foreign Assets

A little known new law was enacted for the year 2011 that requires any specified person that holds any interest in a specified foreign financial asset during the taxable year to attach a statement to that person's U.S. tax return and report information that identifies the value of those specified foreign financial assets in which the individual holds an interest.

Form 8938.

# Specified Foreign Financial Asset

A specified foreign financial asset is

- (i) any financial account maintained by a foreign financial institution;
- (ii) any stock or security issued by any person other than a United States person;
- (iii) any financial instrument or contract held for investment that has an issuer or counterparty that is not a United States person; and
- (iv) any interest in a foreign entity.

# Specified Person

A specified person is defined as a specified individual who is a U.S. citizen, a resident alien or a nonresident who elects to be taxed as a U.S. resident filing Form 1040; and U.S. entities required to file an annual tax returns such as a 1041 (Trust and Estate), 1120 (U.S. Corporation), 1120-S and 1065 (Partnership).



# Specified Person

A specified person that is the owner of an entity disregarded as an entity separate from its owner is treated as having an interest in any specified foreign financial assets held by the disregarded entity.



# Interest in a Specified Foreign Financial Asset

A specified person has an interest in a specified foreign financial asset if any income, gains, losses, deductions, credits, gross proceeds, or distributions attributable to the holding or disposition of the specified foreign financial asset are or would be required to be reported, included, or otherwise reflected by the specified person on an annual return. A specified person has an interest in a specified foreign financial asset even if no income, gains, losses, deductions, credits, gross proceeds, or distributions are attributable to the holding or disposition of the specified foreign financial asset for the taxable year.

# The Minimum Reporting Requirements

## **Unmarried Taxpayer Living in the United States.**

- Unmarried individuals living in the U.S. have a reporting threshold only if the total value of their specified foreign financial assets is more than \$50,000 on the last day of the tax year or more than \$75,000 at any time during the tax year.

## **Married Taxpayers Filing a Joint Income Tax Return and Living in the United States.**

- Married persons filing a joint income tax return that do not live abroad, satisfy the reporting threshold only if the total value of their joint specified foreign financial assets are more than \$100,000 on the last day of the tax year or more than \$150,000 at any time during the tax year.

# The Minimum Reporting Requirements

## Taxpayers Living Abroad.

- Taxpayers whose tax home is in a foreign country that meets a presence test in that foreign country, satisfy the reporting threshold if they are not filing a joint return if the total value of their specified foreign financial assets is more than \$200,000 on the last day of the tax year or more than \$300,000 at any time during the tax year.
- Married and file a joint income tax return satisfy the reporting threshold only if the total value of all specified foreign financial asset the couple owns is more than \$400,000 on the last day of the tax year or more than \$600,000 at any time during the tax year.



# Penalties

- There are penalties for the failure to disclose the information required to be reported. If the failure to comply continues for more than 90 days after the day on which the failure is reported to the individual, the individual must pay an additional penalty of \$10,000 for each 30-day period (or fraction thereof) during which the failure to disclose continues after the expiration of the 90-day period, to a maximum of \$50,000.
- However, no penalty will be imposed for any failure to report that is shown to be due to reasonable cause and not due to willful neglect. But one cannot excuse the failure to disclose assets just because disclosing the information required could lead to violations of foreign laws. There also can be criminal penalties for the failure to file the report.

# Helpful Definitions

## **Financial Account maintained by a Foreign Financial Institution**

A financial account is defined as respect to any financial institutions

- 1) Any depository account maintained by such financial institution;
- 2) Any custodial account maintained by such financial institution; and
- 3) Any equity or debt interest in such financial institutions (other than interests which are regularly traded on an established securities market).

# Other Financial Assets

Examples of other specified foreign financial assets include the following, if they are held for investment and not held in a financial account.

- Stock issued by a foreign corporation.
- A capital or profits interest in a corporation.
- A note, bond, debenture, or other form of indebtedness issued by a foreign person.
- An interest in a foreign trust or foreign estate.
- An interest rate swap, currency swap, basis swap, interest rate cap, interest rate floor, commodity swap, equity swap, equity index swap, credit default swap, or similar agreement with a foreign counterparty.
- An option or other derivative instrument with respect to any of these examples or with respect to any currency or commodity that is entered into with a foreign counterparty or issuer.



# There are also certain Exclusions for Assets Not Subject to Reporting

These include:

- 1) Assets such as those which specified persons, such as traders and others in the securities business use mark-to-market accounting method and
- 2) Interests in a social security, social insurance, or other similar program of a foreign government. However, this generally does not include similar programs that are funded by the Taxpayer's voluntary payments such as I.R.A.'s,

# There are also certain Exclusions for Assets Not Subject to Reporting

- 3) Foreign assets used in a trade or business are not subject to the reporting requirements. An asset is used in, or held for use in, the conduct of a trade or business and not held for investment if the asset is:
- a) Held for the principal purpose of promoting the present conduct of a trade or business.
  - b) Acquired and held in the ordinary course of a trade or business, as, for example, in the case of an account or note receivable arising from that
  - c) trade or business; or
  - d) Otherwise held in a direct relationship to the trade or business.

# There are also certain Exclusions for Assets Not Subject to Reporting

*However, stock is never considered used or held for use in a trade or business for purposes of applying this test*

## 4) Elimination of duplicate reporting of assets. . .

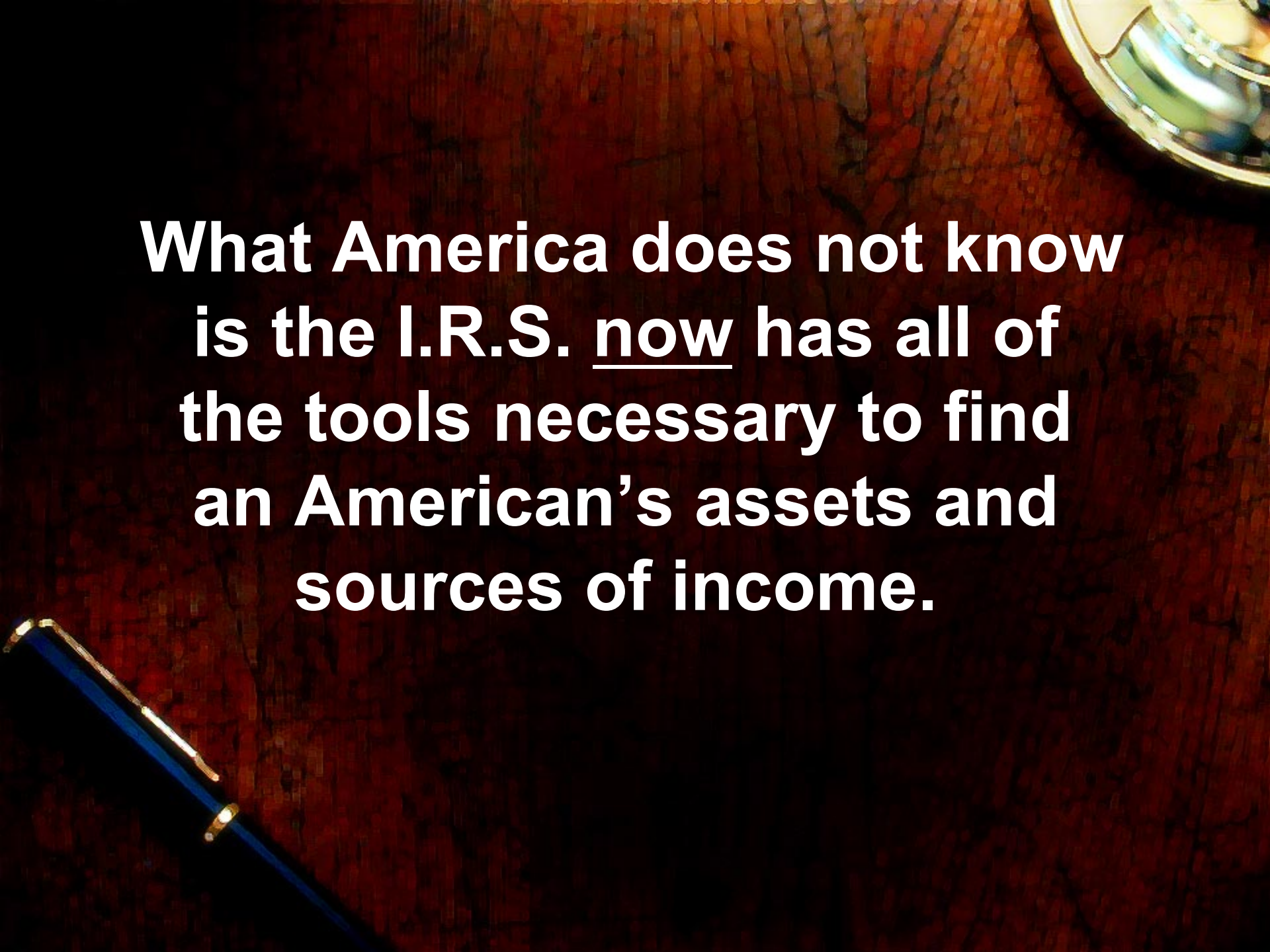
A specified person is not required to report a specified foreign financial asset if the specified person reports the asset on at least one of the following forms timely filed with the Internal Revenue Service for the taxable year. Form 3520, Form 5471, Form 8621, Form 8865, Form 8891.

## 5) Residents of U.S. Possessions.



# Required Information

- Disclosure Requirements
- Stocks and Securities
- Financial Instruments
- Foreign Entities
- Depository/Custodial Accounts
- Income

A dark wood desk with a blue pen and a glass. The text is centered on the desk.

**What America does not know  
is the I.R.S. now has all of  
the tools necessary to find  
an American's assets and  
sources of income.**





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