

New Law Changes FBAR Filing Deadline

August 10, 2015

Beginning with the FBAR (FinCEN Report 114) for the 2016 year, the filing deadline for the FBAR will be April 15th with a six-month extension until October 15th available upon request. The Surface Transportation and Veterans Health Care Choice Improvement Act of 2015, which was enacted on July 31, 2015, modified the FBAR filing deadline from June 30th to April 15th to align it with the filing deadline for individual income tax returns. (Pub. Law 114-41) Significantly, now FBAR filers can request a six-month extension until October 15th to file the report.

Under the new law, the FBAR filing deadline for U.S. citizens and residents residing abroad will be automatically extended until June 15th, with an additional four-month extension available until October 15th. The law does not provide another two-month extension until December 15th, which is currently available upon request to taxpayers residing abroad to file their income tax returns.

The change is apparently meant to benefit taxpayers by aligning due dates and allowing for an extension; however, it does accelerate the unextended FBAR filing by several months. The law also gives the IRS authority to waive penalties for taxpayers who are first-time FBAR filers who failed to timely request an extension to file. To obtain the penalty relief, the taxpayers must file the FBAR by October 15th.

Taxpayers should understand that this change does not relieve them from reporting foreign accounts and/or assets on their tax return (e.g., on Schedule B, Forms 8938, 5471, 3520 or 3520-A). It is also yet unclear whether the taxpayers will be able to request an extension to file an FBAR in conjunction with a request for an extension to file a tax return or if a separate FinCEN filing will be required. And while the change will certainly apply to the 2016 FBAR filing due date, which will now be April 15, 2017, until further guidance is issued, the due date for the 2015 FBAR remains June 30, 2016. Nor does the law change the requirement that the FBAR be electronically filed with FinCEN, separate and apart from the tax return.

In addition to modifying the FBAR filing deadline, the law also changes the filing deadlines for partnership, S Corporation, and C Corporation tax returns. It also overturns the Supreme Court's decision in *Home Concrete v. United States*, 132 S.Ct. 1836 (2012), where the Court held that an overstatement of basis does not result in an omission of income which triggers the six-year statute of limitations on assessment. The law amends Section 6501(e)(1)(B) to explicitly include an overstatement of basis in the definition of the omission from gross income.

[Caplin & Drysdale](#) has a full team of lawyers well-versed in all aspects of foreign asset reporting. For further information, please contact a member of [Caplin & Drysdale's Tax Controversies Group](#).

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