

Federal Taxes Weekly Alert,

IRS releases draft version of Form 8938 for foreign financial asset holders

IRS is seeking comments on new draft Form 8938, "Statement of Specified Foreign Financial Assets," which is available on IRS's website. Form 8938 will be used by individuals to report an interest in one or more specified foreign financial assets under Code Sec. 6038D .

Background. For tax years beginning after Mar. 18, 2010, the Hiring Incentives to Restore Employment Act of 2010 (HIRE Act, P.L. 111-147) provides that individuals with an interest in a "specified foreign financial asset" during the tax year must attach a disclosure statement to their income tax return for any year in which the aggregate value of all such assets is greater than \$50,000. (Code Sec. 6038D(a)) In addition, to the extent provided by IRS in regs or other guidance, Code Sec. 6038D applies to any domestic entity formed or availed of for purposes of holding, directly or indirectly, specified foreign financial assets, in the same manner as if the entity were an individual. (Code Sec. 6038D(f))

"Specified foreign financial assets" are: (1) depository or custodial accounts at foreign financial institutions, and (2) to the extent not held in an account at a financial institution, (a) stocks or securities issued by foreign persons, (b) any other financial instrument or contract held for investment that is issued by or has a counterparty that is not a U.S. person, and (c) any interest in a foreign entity. (Code Sec. 6038D(b))

Recent guidance. In Notice 2011-55, 2011-29 IRB , IRS suspended the Code Sec. 6038D reporting requirements until it releases Form 8938. (Weekly Alert ¶ 3 06/23/2011) After new Form 8938 is released in its final form, individuals for whom the filing of Form 8938 was suspended for a tax year will have to attach the form for the suspended tax year to their next income tax return required to be filed with IRS.

Notice 2011-55 , further stated that the Code Sec. 6501(c)(8) limitations period for tax assessments for periods for which reporting is required under Code Sec. 6038D won't expire before three years after the date on which the IRS receives Form 8938.

Draft Form. The draft Form 8938 was released on June 22nd without instructions. However, the draft form references the instructions throughout, which indicates that they will likely be issued soon.

Part I of the draft form requires information about foreign deposit and custodial accounts, including the maximum value of any such account during the tax year. Part II has similar entries for "other foreign assets," but notes that specified foreign financial assets that have been otherwise reported on Forms 3520, 3520-A, 5471, 8621, or 8865, do not have to be included on Form 8938. Part III asks for a summary of tax items attributable to the accounts and assets reported in Parts I and II, including associated items such as interest, dividends, and royalties. Part IV requires disclosure of the number of the filed forms referenced in Part II on which any foreign financial assets that were excepted from Part II were reported.

Comments on the form must be submitted on IRS's website within 30 days of the form's June 22nd posting date to receive consideration.

References: For reporting requirement for individuals with foreign assets, see FTC 2d/FIN ¶ S-3650.1 ; United States Tax Reporter ¶ 60,38D4 ; TaxDesk ¶ 815,516 ; TG ¶ 60613 .