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## ***New Increased Penalties - Continued***

Last month we discussed increasing penalties for misclassifying workers as independent contractors. We want to continue that theme by making you aware of some jaw-dropping penalties for failure to heed increased reporting requirements for U.S. taxpayers holding foreign financial accounts or assets.

### ***Foreign Financial Accounts***

If you have, or your business has, a financial interest in, or authority over, any foreign accounts or securities, you are responsible for disclosing them. Foreign securities held in a United States brokerage account are *not* considered foreign assets for this purpose and are not required to be reported.

For individuals, if you have more than \$1,500 of taxable interest and ordinary dividends and are required to complete Schedule B with your 2011 tax return, you must check the box "Yes" on Schedule B if you had a bank, brokerage or securities account located in a foreign country.

For businesses and individuals, if you held foreign accounts in 2011 with an aggregate value of \$10,000 or more at any time during the year, you must separately file Form TD F 90-22.1. This form simply lists your foreign accounts with their account values, and we can complete this for you along with your tax return. However, it **must be filed before June 30, 2012**, regardless of whether you file an extension. Unlike your tax return, this form must be **received** by the Detroit Data Center by June 30; it is not enough to mail it on the due date.

**Civil penalties for failure to timely file this form begin at \$10,000 for a non-willful violation and exceed \$100,000 for willful violators.**

### ***Foreign Financial Assets***

There is a new requirement for 2011 tax returns aimed at taxpayers holding "specified foreign financial assets" valued at \$50,000 or more. This rule applies to businesses and individuals who own foreign assets such as an interest in a foreign entity, financial accounts, securities, an interest in a foreign trust, etc. Form 8938 is filed with your tax return and discloses these assets. Failure to do so results in a **penalty of \$10,000** with additional penalties assessed if failure to disclose continues after the Treasury Department notifies the taxpayer of the omission.

### ***Let Us Know if We Can Help***

Don't let June 30 pass by without calling us if you think you or your business may be subject to foreign asset reporting requirements.

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## ***UPDATE: Doing Business in California***

If your business is organized outside of California, but has business activity, assets, employees, or sales within California, you should be aware of not only the requirements but of the benefits and pitfalls of registering to do business in the state.

California defines "doing business" as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. For taxable years beginning on or after January 1, 2011, the definition is expanded and a taxpayer will be considered to be doing business in California if any of the following conditions is satisfied:

- The taxpayer is actively engaging in any transaction in California for the purpose of financial or pecuniary gain or profit.
- The taxpayer is organized or commercially domiciled in California.
- Sales in California, including sales by the taxpayer's agents and independent contractors, exceed the lesser of \$500,000 or 25 percent of the taxpayer's total sales.
- Real and tangible personal property of the taxpayer in California exceed the lesser of \$50,000 or 25 percent of the taxpayer's total real and tangible personal property.
- The amount of compensation paid in California by the taxpayer exceeds the lesser of \$50,000 or 25 percent of the total compensation paid by the taxpayer.

It is important to determine whether you are "doing business" in California because failure to register and qualify to do business in the state can have dire consequences. Companies that fail to register may limit their ability to maintain a legal action within the state's courts, such as the right to initiate lawsuits or enforce contracts on business done in that state (please consult your attorney). The company can also be held liable for significant taxes, fines and penalties.

On the other hand, qualifying to do business in a state may also expose your company to the legal jurisdiction of the state. The registration process is intended to increase protection of the state's consumers by requiring out-of-state companies to appoint an agent inside the state for service of process. In addition, an out-of-state taxpayer that is considered to be doing business in California will need to file the appropriate tax return and pay the appropriate tax and fees.

You may ultimately find that the filing costs and minimum annual taxes are well worth the peace of mind. Again, please consult your attorney regarding the legal ramifications pertinent to your situation. You can find all of the forms needed to file as a "foreign" (out-of-state) corporation, LLC or partnership on the California Secretary of State's website at <http://www.sos.ca.gov/>. Of course we will be happy to assist you with completion of any business entity formation or registration forms.

### **Questions?**

If you have any questions about this newsletter or any tax issue, please feel free to contact our office at (775) 882-3201. You can also find a copy of this newsletter as well as our other updates and notices at [www.fwcpas.com](http://www.fwcpas.com).