

# **Accounting and Taxation For Attorneys:**

## ***The Issues That Will Hound You When the IRS Has Found You***

**Gary Howard, CPA, Managing Partner**

**GL Howard and Company CPAs, LLP**

**10417 Los Alamitos Blvd.**

**Los Alamitos, CA 90720**

**Ph. (562) 431-9844**

**[www.glhowardandcompanycpas.com](http://www.glhowardandcompanycpas.com)**



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# **Accounting and Taxation For Attorneys:**

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## **Topics**

- I. What's Deductible and Not Deductible?
- II. Information Returns
- III. Foreign Reporting
- IV. Examination Issues

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## **Topic I – What’s Deductible and Not Deductible?**

### Types of Business Expenses

1. Entertainment, amusement and recreation
2. Travel
3. Automobile use

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## Topic I – What's Deductible and Not Deductible?

1. Entertainment, Amusement and Recreation (IRS Topic 512)
  - a) Expense must be both ordinary and necessary to carry on trade or business under IRC § 162
  - b) Must meet substantiation requirements under IRC § 274

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## Topic I – What's Deductible and Not Deductible?

### Substantiation Requirements

1. Maintain adequate records or sufficient evidence
  - A. Elements of expense
  - B. Adequate records
  - C. Sufficient evidence

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## Topic I – What's Deductible and Not Deductible?

### Travel (IRS Topic 511)

- a) Expense must be both ordinary and necessary to carry on trade or business under IRC § 162
- b) Must meet substantiation requirements under IRC § 274

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## Topic I – What's Deductible and Not Deductible?

Travel – Deemed substantiation methods

1. Auto – standard mileage auto (57.5 cents per mile)
2. Meals – per diem rate \$46/day
3. Incidental expense only method - \$5 deduction/day
4. If expense under \$75, documentary evidence not necessary

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## **Topic I – What's Deductible and Not Deductible?**

### Automobile Use (IRS Topic 510)

1. Actual expenses
2. Standard mileage rate



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## Topic I – What's Deductible and Not Deductible?

### Other Expenses

- a) Business gifts
- b) Corporate vs. personal expenses
- c) Depreciable books and periodicals
- d) Expenses not deductible

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## Topic II – Information Returns

### Information Returns

- a) Form 1099
- b) Form 8300
- c) W-9
- d) W-4

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## Topic II – Information Returns

### Form 1099-MISC, Miscellaneous Income

- a) Required to report payments of \$600 or more
- b) Exception – payments made to corporations
  - a) Exception does not apply to payments for legal services
- c) New due date – Feb. 28<sup>th</sup> by paper (Mar 31<sup>st</sup> electronically)

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## Topic II – Information Returns

### Form 8300, Report of Cash Payments Over \$10,000

- a) Received in the course of trade or business
- b) Received more than \$10,000 in one transaction or related transactions
- c) Received Installment payments - over \$10,000 within 12-months
- d) Cash received for potential clients where services are not yet performed

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## Topic II – Information Returns

### Increased Information Return/ Form 8300 Penalties

- a) For failure to file and correct information returns (IRC § 6721)
- b) For failure to furnish correct payee statements (IRC § 6722)
- c) Penalties increased due to inflationary adjustments

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## Topic II – Information Returns

### Other Information Returns

- a) W-9
- b) W-4

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## **Topic II – Information Returns**

Filing requirements for foreign accounts and financial assets

- a) Report of Foreign Bank and Financial Accounts (“FBAR”) -  
Form FinCEN 114
- b) Statement of Specified Foreign Financial Assets - Form  
8938

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## Topic III – Foreign Reporting

### Form FinCEN 114 (“FBAR”) Reporting Requirements

- a) Financial interest or signature authority
- b) Aggregate value of foreign accounts > \$10,000
- c) File electronically via BSA website
- d) New - File by income tax return due date including extensions
- e) Penalties
  - Non-willful: \$10,000
  - Willful: Greater of \$100,000 or 50% of account balance



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## Topic III – Foreign Reporting

### Form 8938, Statement of Specified Foreign Financial Assets

- a) Interest in specified foreign financial asset
- b) Reporting threshold – See next slide
- c) File by due date of income tax return (including extensions)
  - Failure to file: \$10,000
  - Continue failure to file: Additional \$10,000 (maximum \$60,000)

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## Topic III – Foreign Reporting

### Reporting Thresholds

At any time during tax year, if total value is more than:

	Living in U.S.	Abroad
Unmarried/ MFS	75,000	300,000
Married	150,000	600,000

On the last day of tax year, if total value is more than:

	Living in U.S.	Abroad
Unmarried/ MFS	50,000	200,000
Married	100,000	400,000

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## Topic III – Foreign Reporting

### Form 8938 vs. FBAR

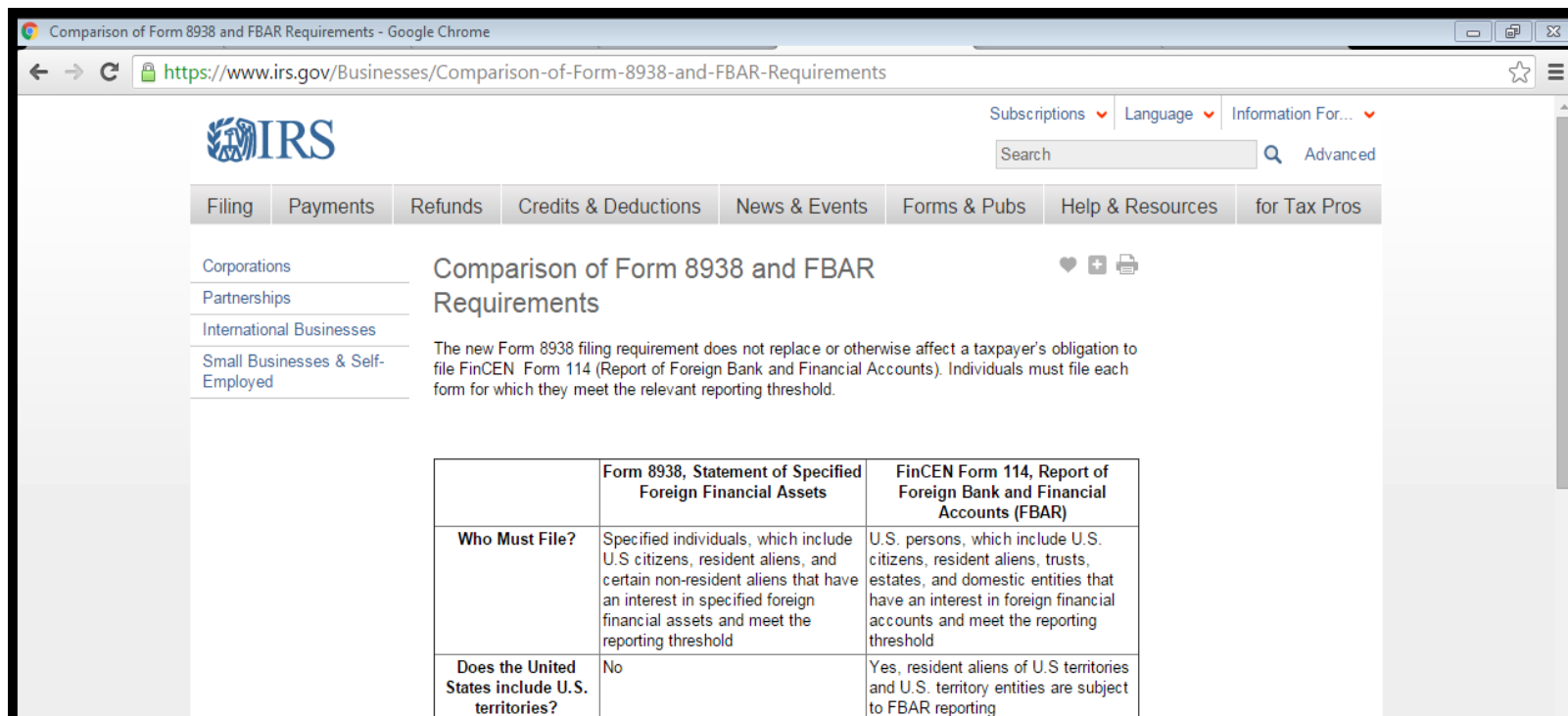
- a) “Comparison of Form 8938 and FBAR Requirements” found on [www.irs.gov](http://www.irs.gov)
- b) Financial assets vs. accounts
- c) Reporting threshold accounts
- d) Due dates
- e) Government authority

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### Topic III – Foreign Reporting

### Comparison of Form 8938 and FBAR Requirements (www.irs.gov)



The screenshot shows the IRS website page for 'Comparison of Form 8938 and FBAR Requirements'. The page includes the IRS logo, navigation tabs for 'Filing', 'Payments', 'Refunds', 'Credits & Deductions', 'News & Events', 'Forms & Pubs', 'Help & Resources', and 'for Tax Pros'. A search bar and 'Advanced' search options are visible. The main content area is titled 'Comparison of Form 8938 and FBAR Requirements' and includes a summary paragraph and a comparison table.

The new Form 8938 filing requirement does not replace or otherwise affect a taxpayer's obligation to file FinCEN Form 114 (Report of Foreign Bank and Financial Accounts). Individuals must file each form for which they meet the relevant reporting threshold.

	Form 8938, Statement of Specified Foreign Financial Assets	FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR)
<b>Who Must File?</b>	Specified individuals, which include U.S. citizens, resident aliens, and certain non-resident aliens that have an interest in specified foreign financial assets and meet the reporting threshold	U.S. persons, which include U.S. citizens, resident aliens, trusts, estates, and domestic entities that have an interest in foreign financial accounts and meet the reporting threshold
<b>Does the United States include U.S. territories?</b>	No	Yes, resident aliens of U.S. territories and U.S. territory entities are subject to FBAR reporting

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## **Topic III – Foreign Reporting**

### **What is a Specified Foreign Financial Asset?**

- Foreign bank accounts
- Foreign deposits (time deposits, CDs)
- Foreign securities/ brokerage accounts
- Foreign stock (including corporate stock)
- Foreign partnership interests
- Interest in foreign trust or foreign estate

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## **Topic III – Foreign Reporting**

### **What is NOT a Specified Foreign Financial Asset?**

- Real estate not owned by a foreign entity
- Foreign issued life insurance
- Precious metals
- Personal property (art, cars, and other collectibles)
- Social security type program

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## Topic IV – Examination Issues for Attorneys

### A. Audit Issues for Attorneys

#### 1) Unreported income

- Example) Litigation award checks deposited in attorney's personal account
- Audit Issue – Determine if fees were included in income at proper time

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## Topic IV – Examination Issues for Attorneys

### A. Audit Issues for Attorneys (continued)

#### 2) Deferral of income

- After settlement of case, legal fees remain in trust account until next year and is not included in income
- Once settlement is received, attorney's fee is both determinable and available and should be included in income in the year received
  - “Constructive receipt” doctrine – Treas. Reg. § 1.451-2
  - Audit issue – analyze source of funds remaining in trust account at year-end (i.e. large ending balance)



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## Topic IV – Examination Issues for Attorneys

### A. Audit Issues for Attorneys (continued)

#### 3) Unreported income and noncash receipts

- Noncash receipts instead of fees are received for services rendered
- Loan
- Bartering

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## Topic IV – Examination Issues for Attorneys

### A. Audit Issues for Attorneys (continued)

#### 4) Advance Client Costs Audit Issues

- Attorney's argument - no guarantee for reimbursement for advanced litigation costs
- Courts look at attorney's case selection, fee advancement processes and success rate
- Treatment of advanced legal costs by IRS agent
  - Accounting method change
  - IRC 481 adjustment

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## Topic IV – Examination Issues for Attorneys

**YOU are being examined. What to do???**

- 1) Due diligence
- 2) Opening conference
- 3) Information gathering
- 4) Audit report
- 5) Agree or appeal
- 6) Close and move on!

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## Topic IV – Examination Issues for Attorneys

- 1) Due diligence
  - Due diligence preparation
  - 30-day time frame
  - Questions to ask - IRS Audit Guide for Attorneys
  - Prepare deposit analysis ahead of time
  - Non-income items
  - Do auditor's work

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## **Topic IV – Examination Issues for Attorneys**

- 2) Opening Conference
  - Who attends?
  - What if IRS forces you to attend interview?

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## Topic IV – Examination Issues for Attorneys

- 3) Information Gathering
  - Provide information needed
  - Auditor's questions
  - When to call auditor?
  - Extend Status (Form 872)
  - Discrepancy adjustments (Form 4549)

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## **Topic IV – Examination Issues for Attorneys**

- 4) Audit Report
- 5) Accept or Appeal?
- 6) Close and Move on!

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# Questions ?

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