



REID AND RIEGE P.C.
COUNSELLORS AT LAW

TAX LAW ALERT

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Did You File Your IRS Form 3520?

My client, Mr. Good, is the nicest guy in the world. Good was born and raised in South America. In his mid-20s Good came to the U.S. to pursue the American dream and he proceeded to invest the next 40 years of his life making an honest and simple living. You know, W-2 income, some 1099s for interest income, and a Form 1098 for mortgage interest paid to Bank where, to the best of his knowledge, he held all of his financial accounts.

Mr. Good's father, Mr. Good, Sr., died in 2013, and left a bequest to his son of \$1 million! In ill health himself, Mr. Good, now a millionaire, took this gift as an opportunity to retire with his tax-free money safely tucked away in Bank. Not so fast. How safe was it?

In 2009 UBS and the U.S. and Swiss governments agreed to settle a dispute over whether the Swiss banks should be forced to disclose names of 52,000 rich U.S. clients suspected of tax evasion. Born out of this settlement was the 2009 Offshore Voluntary Disclosure Program where these 52,000 rich U.S. clients (and all other takers) were offered amnesty and an opportunity to come clean with the U.S. taxing authorities (the price for amnesty included payment of an "Omnibus Penalty" equal to 25% of the highest outstanding principal balance maintained in the account). We all learned about such things as FBARs (Foreign Bank Accounting Reporting), FACTA (the Foreign Account Tax Compliance Act) and the rise of FinCEN (the Financial Crimes Enforcement Network), designed to fight against money laundering.

The battle started in Switzerland, but this war chased this cancer throughout the far reaches of the earth, including South America. Upon arrival below the equator, armed with FACTA, FinCEN and other bullets, the U.S. authorities beat banks and other financial institutions into submission to also, presumably, collect names of "rich U.S. clients" suspected of tax evasion. The senior Good had established a bank account in Mr. Good's name over which he had no signatory authority, control or knowledge. Nonetheless, his name was thrown in with the lot of tax evaders. The trouble began when he patriotically answered, "Yes," to the South American bank when apprised of the account and presented with his two options: (1) withdraw the money; or (2) be subject to the bank's disclosure of the account to the U.S. As I mentioned, Mr. Good is the nicest guy in the world, and he chose the second option thinking that disclosing the account to the U.S. authorities was the right thing to do. No good deed ever goes unpunished and the IRS audited Mr. Good for his interest in this foreign bank account.

The good news (no pun intended) was Mr. Good's behavior was determined to be non-willful by the IRS upon the audit of his 2013 return. This meant that Mr. Good only faced an FBAR penalty of \$10,000 a year going back to 2008 to cover the 6-year audit period for the bank account in his name over which he had no signatory authority, control or knowledge. So \$60,000 in the aggregate for an account that he didn't know existed seemed like a fair deal.

Wait a minute, why did I bring up the bequest in the first place and what's this nonsense about a fair deal? Here's where a sad story becomes gross.

Mr. Good was required to file IRS Form 3520 for the \$1 million bequest from his father because the senior Good was a nonresident alien individual who made a gift or bequest to his son in excess of \$100,000. For this failure the penalties are quite severe: (1) the greater of \$10,000 or 35% of the gross reportable amount; or (2) 5% of the gift per month for returns reporting gifts up to a maximum penalty of 25% of the gift. Upon conclusion of the audit, Mr. Good was directed to stroke a check in the amount of \$250,000 to the U.S. Treasury for this transgression. This is where I step in. There is an out if you can demonstrate that the failure to comply was due to reasonable cause and not willful neglect.

I am sure that the senior Good is rolling in his grave. His bequest to his son, fulfilling the American dream of becoming a millionaire, ends up being \$310,000 short of the goal (should I fail to establish reasonable cause). Don't you just hate these rich U.S. clients!

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