



## **Robert W. Wood** THE TAX LAWYER

TAXES 11/15/2014

### I Am Canada, Hear Me Roar Mr. President

*This letter was sent to me by a concerned Canadian who recently learned he is still regarded as American too.*

Dear President Obama:

I and thousands of Canadians are embroiled in an impossible situation. I am a Canadian. Yet because I was born in the U.S., you say I must file tax returns and FBARs, even though I haven't lived there since 1973. I was not aware I needed to file U.S. tax returns and never heard of FBARS or FATCA until now.

Turns out the law has existed since the Civil War, enacted to prevent wealthy people from moving abroad to shirk military and civil duties. The U.S. is one of only two countries in the world with this type of taxation. Eritrea, a dictatorship, is the other. Ironically, the U.S. is vocal about Eritrea and its violations of human rights.

I can't help but wonder why 153 years later, the U.S. decided to enforce it. For decades, many U.S. citizens traveled back and forth from and to Canada. 80% of the Canadian population is concentrated near the U.S. border. Yet border guards never mentioned the need to file tax returns. Did the U.S. not inform us purposely? How about educating citizens through TV? Most people have cable and most of the cable is U.S.



I believe the U.S. wasn't looking primarily for wealthy offshore accounts. FATCA was always about grabbing fines and penalties, taking from Canada and other nations to fuel the U.S. recovery. The IRS gloats that 43,000 have become compliant, collecting \$6 billion for the U.S. That money is mostly fines and penalties, as reported by the U.S. Taxpayer's Advocate.

I never had a social security number or U.S. passport. I came to Canada as a young boy, was educated in Canadian schools, married a Canadian, have Canadian children. A resident and citizen of Canada for decades, I and thousands of others *ARE CANADA!* We will never take a dime from the U.S. We do not use U.S. services but must pay fines levied against us. Besides, would I *want* a U.S. passport? Americans are the first to be grabbed by terrorists.

FBARs are forms to report all of your accounts, chequing, savings, R.R.S.P., R.E.SP., TFSA, even a child's account. The fine for not filing if "non-willful" is \$10,000. If you are "willful" it is the greater of \$100,000 or 50% of the account for each year you didn't file.

Even so, my biggest issue with becoming compliant is disclosing my employer's accounts on FBARs. I work for a Canadian employer and have signing authority on general, pooled and trust accounts. FBARs require *all* accounts to be disclosed, financial institutions, addresses, account numbers, business address, business number assigned by the Canada Revenue Agency, my employer's social insurance number and the highest balance in each account for the year.

My employer wonders why the IRS wants information about *his* accounts. He is a Canadian without U.S. ties. He has grave concerns about security, yet I cannot become compliant without disclosing his accounts. Can he fire me because America still claims I am American?

Even if I were to quit, I would *still* have to disclose his accounts. If I am audited, will the IRS or FinCEN audit *his* accounts? The IRS says I must retain records in the event they have questions about the accounts.

What if the IRS rejects my claim that I was non-willful? Many innocent people have gone into the Streamlined Program or OVDP and find themselves in this situation. Nina Olsen, the US Taxpayer Advocate, called it IRS "bait and switch" tactics.

By taking the Oath of Canadian Citizenship, I believe I relinquished my US citizenship decades ago. Yet now the U.S. government says not so fast. The U.S. State Department has changed the regulations many times over the years. They *used* to say that an individual voting in foreign elections forfeits U.S. citizenship. Other acts were also considered expatriating.

Then, in the 1990s, the U.S. State Department adopted *new* regulations. Turns out an individual does not give up citizenship when performing potentially expatriating acts. All those individuals who forfeited U.S. citizenship had it restored and are—for tax purposes—American again.

Now, you say renouncing must be *formal*. Yet many individuals like me were unaware of the need to attend an Embassy to relinquish or renounce. Others actually renounced at a U.S. Embassy years

ago, but the Embassy did not issue a certificate of renunciation. They were not asked if they had been filing a U.S. tax return when they renounced. The U.S. State Department today says if they believed you renounced to avoid taxes, they will *restore* your citizenship.

What do I do now? I do not want to live my life like this. I share a chequing account and savings account with my spouse. My adult children needed a parent to open accounts when they were younger. Although those accounts are since closed, I would *still* have to report those accounts. What a system.

I have a Canadian R.R.S.P. and a R.E.S.P. My income is small. Most of our money belongs jointly to my Canadian spouse who has no U.S. ties—except for me. Now, the IRS will treat the accounts and the money in them as if they are wholly mine. They will treat the accounts as offshore accounts and me as a tax cheat hiding money in Swiss banks or the Caymans.

The situation is causing stress in our marriage. I have been quoted \$7,500.00 to become compliant, and it would cost me \$2,350.00 to renounce. They require three years of tax returns and six years of FBARS. I don't think I need to renounce as I believe that I relinquished in 1993. I cannot vote in U.S. elections, will never be eligible for Social Security or ObamaCare. Yet the IRS wants taxes, interest and fines.

We have no representation in the U.S. and no voice. Ironically, taxation without representation was the catalyst for the Boston Tea Party. We were children when we came to Canada. We are Canadians. Who will be our voice?

Will our bank accounts be closed like others in Switzerland, Germany, England and Mexico? The banks closed those accounts citing the cost of complying. Who says when it is enough? Does the U.S. government care about the mess it has created for ordinary people living ordinary lives abroad? I hope so, Mr. President. I truly hope so.

Sincerely,

I AM CANADA

*You can reach me at [Wood@WoodLLP.com](mailto:Wood@WoodLLP.com). This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.*