

FBAR: “Family Ownership” Attribution Rules (IRC §318)

IRC §318 constructive ownership of stock rules attribute ownership to family members who maintain common ownership in an entity (e.g., trust). If 2 or more family members are Trust beneficiaries (or any one act as Trustee), the issue is whether IRC §318 Family Attribution Rules (i.e., greater than 50% ownership interests) require any Trust beneficiary to file a FBAR to disclose foreign bank accounts owned by the Trust.

Under IRS §318(a)(1)(A)(i)(ii), an individual shall be considered as owning the stock owned, directly (or indirectly), by or for:

- 1. His spouse.**
- 2. His children, grandchildren and parents.**

The IRS has advised:

1. A US Taxpayer, who is a Trustee, is required to file a FBAR for the Trust if the US Trustee has either:
 - a. A financial interest, or
 - b. Signature authority over a foreign account.

On 8/21/09 the IRS confirmed to my law offices: A beneficiary of more than 50% of trust assets must file the FBAR on account of the trust.

As the IRS clarified (8/21/09) U.S. Taxpayer Family Trusts may hold Foreign Bank (and Financial) accounts, and unless one of the Trust beneficiaries has a more than a 50% interest in income or principal, none of the Trust beneficiaries are required to file a FBAR (to disclose the foreign bank [financial] account).

On 8/21/09, the IRS confirmed:

- 1. If the trust has a discretionary class of two or more beneficiaries, and none of the beneficiaries has a more than a 50% interest in income or principal, none of the beneficiaries need to file a FBAR to report foreign bank accounts.**

2. The “ownership” attribution rules of Title 26 (IRC §318) are not applicable to a FBAR (filing) (which includes a discretionary class of beneficiaries [i.e., family trusts]).

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