The trouble with foreign bank accounts

E-mail 1: *So I met with 2 lawyers yesterday to talk about the beef. They are very interested in going by the book.*

E-mail 2: *What do your guys mean by "by the book"? Another interpretation of "by the book" would entail each of us paying 750 lbs. to the FDA, plus more each year if the beef grows mold.*

The writers of these cryptic e-mails, as reported in *Crain's New York Business*, were not butchers or ranchers. They were two of Harry Seggerman's adult children, referring in their own code to a $12 million secret Swiss bank account. Seggerman had enjoyed a very successful 50-year career on Wall Street, including a stint as vice chairman at Fidelity Investments and supervising the launch of a hedge fund called International Investment Advisors, specializing in Korea. At his death in 2001, Seggerman's estate was worth an estimated $24 million. Under his will Seggerman's surviving spouse inherited $5 million of the $12 million Swiss account, with the balance divided among five of his six children.

The issue being discussed in the e-mail exchange was whether to reveal the Swiss account to the IRS. The account was fully subject to the federal estate tax, which in 2001 would have eaten up 55% of the children's inheritance. They decided to leave the money in Switzerland, not reporting it to the IRS. They set up Swiss accounts of their own to receive the money, and they used surreptitious means to transfer funds back into the U.S. By disguising the transfers as loans, for example, they also hoped to avoid income taxes on the money.

Enter FATCA

The practice of wealthy families hiding assets in offshore accounts has long been of concern to Congress. A U.S. Senate report in 2008 claimed that the annual lost tax revenue from offshore banking could be as much as $100 billion. In response, the Foreign Account Tax Compliance Act (FATCA) was introduced in Congress in 2009, and it was enacted in 2010 as part of the HIRE Act (Hiring Incentives to Restore Employment Act). However, the IRS had been going after secret offshore accounts long before FATCA was adopted.

In 2009 the IRS reached a settlement with Swiss bank UBS concerning accounts of American citizens. UBS paid a fine of $780 million and turned over information on about 4,500 of its clients. That's when the Service discovered what the Seggerman heirs had done.

The surviving spouse, the disinherited child, and another child who is mentally impaired were not prosecuted, but the other four children were charged with tax evasion. All four have pled guilty. They could spend up to 11 years in prison. (They haven't been sentenced as of this writing.)

Compliance costs

FATCA imposes significant regulatory costs on foreign banks, and it also requires new reports by Americans of their foreign holdings via Form 8938. The burdens are such that many foreign banks reportedly are no longer willing to accept American depositors. Many have questioned whether the new revenue will outweigh the substantial compliance costs. Nevertheless, at least ten countries already have concluded new treaties with the U.S. for implementing FATCA.

According to *Time* magazine, the number of Americans renouncing their citizenship rose sevenfold from 2008 through 2011. *BBC News Magazine* reported another surge in the second quarter of 2013. The IRS maintains that FATCA created no new tax obligations on U.S. citizens living abroad; it only put in place mechanisms for detecting tax evasion. But it may be that for some expatriates, the mechanism is onerous enough that they will change their citizenship.

Any developments occurring after January 1, 2014, are not reflected in this article.