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here are many reasons why a taxpayer may owe no income tax on his foreign accounts. The taxpayer may have reported income from the accounts on his income tax returns. Or the accounts may have not generated any income.

It is also possible that the assessment statute of limitations has expired on income generated by the account. For example, assume that Taxpayer had a Swiss account, but closed it in 2010, and has not had a foreign account since. Taxpayer has not filed an FBAR for the Swiss account. The income tax assessment statute of limitations is three years, and it begins to run from the time the tax is assessed. Tax is assessed upon the filing of an income tax return, or later upon audit. A 2010 income tax return was due to be filed on April 15, 2011, but may have been extended to October 15, 2011, and of course may have been filed late. If more than three years have passed since Taxpayer filed his 2010 income tax return, and he has paid all income tax was assessed against him, then he could owe no income tax for any year before 2011.

It is true that there is no assessment statute of limitations where the taxpayer has committed fraud. But the IRS has the burden of proving fraud, by clear and convincing evidence. Fraud requires proof that the client knew and understood the law, and deliberately failed to follow it. Fraud also requires an element of deceit, dishonesty, or evil motive. We would never presume that a client has committed fraud. There is no evidence that Taxpayer in our example has committed fraud=

The statute of limitations on assessment of an FBAR penalty is six years, and it begins to run on the filing date of the FBAR--the June 30 succeeding the calendar year of the FBAR.

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