



TaxNewsFlash

United States



No. 2023-072
February 28, 2023

U.S. Supreme Court: Penalty for FBAR violation applies on per-report, not per-account basis

The U.S. Supreme Court today held that the penalty for violating the “Report of Foreign Bank and Financial Accounts” (FBAR) rules to report a qualifying account applies on a per-report basis, and not on a per-account basis.

The court’s decision resolved a split between the Fifth Circuit, which held the penalty applied on a per-account basis, and the Ninth Circuit, which held the penalty applied on a per-report basis.

The case is: *Bittner v. United States*, No. 21-1195 (S. Ct. February 28, 2023). Read the Court’s [opinion](#) [PDF 202 KB].

Summary

As previously reported in [TaxNewsFlash](#):

- The taxpayer (born in Romania and a naturalized U.S. citizen) returned to Romania where he earned millions of dollars in various investments and business interests. To manage his wealth, the taxpayer maintained dozens of numbered bank accounts (to hide his name) in Romania, Switzerland, and Liechtenstein. The taxpayer was unaware that as a U.S. citizen, he had to report his interests in certain foreign financial accounts, and he never filed FBARs while living in Romania.
- The taxpayer returned to the United States in 2011. Upon learning of his FBAR reporting obligations, he ultimately filed FBARs for the years 2007 to 2011. However, those FBARs listed only his largest account and incorrectly stated he did not have an interest in 25 or more qualifying accounts. Two years later, in 2013, amended FBARs were filed disclosing the unreported accounts.
- The U.S. government assessed \$2.72 million in civil penalties against the taxpayer for non-willful violations—\$10,000 for each unreported account each year from 2007 to 2011 (for a total of 272 accounts).

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- In 2019, the government brought suit in federal district court to reduce these penalty assessments to judgment. The district court (on cross-motions for summary judgment) found the taxpayer was liable for a penalty for violations of the FBAR rules; however, the district court reduced the assessment to \$50,000, holding that the \$10,000 maximum penalty attaches to each failure to file an annual FBAR—not to each failure to report an account.
- The Fifth Circuit in December 2021 held that the penalty for violation of the FBAR rules applies on a per-account basis, and thus vacated and remanded this part of the district court’s judgment. Read [TaxNewsFlash](#)
- The Fifth Circuit’s holding differed from the holding of the Ninth Circuit in a March 2021 decision that one penalty applies for the untimely filing of a single accurate FBAR that includes multiple foreign accounts, creating a split between these circuits. Read [TaxNewsFlash](#)

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