

In the courts: Individual's FBAR penalty not time-barred

In *U.S. v. Schwarzbaum*, a federal district court recently rejected an individual's claims that penalties assessed against him for failing to file multiple Reports of Foreign Bank and Financial Accounts (FBARs) should be set aside. He argued that they were assessed after the limitations period had expired. The court's decision holds important lessons for those with foreign accounts.

Reporting requirements

Generally, U.S. citizens who maintain a financial account in a foreign country must file an FBAR with the Treasury's Financial Crimes Enforcement Network (FinCEN) division. The report is required for all foreign financial accounts a taxpayer maintained that had a balance exceeding \$10,000 at any time during the previous calendar year.

Willful failure to file an FBAR may result in a penalty, which can be assessed at any time before the end of the six-year period beginning on the date of the transaction with respect to which the penalty was assessed.

Facts of the case

Between 2006 and 2009, the taxpayer in *Schwarzbaum* maintained several foreign financial accounts, including accounts in Costa Rica and Switzerland. He didn't file FBARs for his accounts in Switzerland before 2011.

In 2011, the taxpayer joined the IRS's Offshore Voluntary Disclosure Initiative (OVDI). As part of his participation, he signed an extension of the statute of limitations period to assess and collect taxes and penalties related to his 2006 through 2009 returns.

The taxpayer then opted out of the OVDI and underwent full examinations of his returns. After the examinations, the IRS decided to assert willful FBAR penalties against him. Those FBAR penalties (for tax years 2006 through 2009) were assessed in September 2016.

Arguments and decision

The taxpayer argued that the FBAR penalty assessments were time-barred. The IRS counterargued that the taxpayer had voluntarily signed a consent to extend the limitations period to assess and collect taxes related to his 2006 through 2009 returns.

The district court held that the taxpayer's argument that the FBAR penalties assessed against him were time-barred was meritless. It was his burden, the court declared, to show that the voluntary agreement to extend the limitations period to assess FBAR penalties was invalid, because that was the taxpayer's affirmative defense. However, he failed to point to any legal authority to support his argument that the agreement he signed was invalid.

This was germane to the decision because, in another recent case (*Melford v. Kahane & Assocs.*), the same court established that a litigant, who had failed to press a point by supporting it with pertinent authority or by showing why it was sound despite a lack of supporting authority or in the face of contrary authority, forfeited the point.

Not easy to win

Failure to meet FBAR reporting requirements on interests in foreign bank and financial accounts can result in costly penalties. And, as this case shows, such penalties aren't easily argued against in court. If you're subject to the requirements, your CPA can provide ongoing compliance assistance. •

U.S. v. Schwarzbaum, No. 18-cv-81147-BLOOM/Reinhart, August 23, 2019 (U.S. Dist. Court, S.D. Florida)
Melford v. Kahane & Assocs., No. 18-cv-60881-BLOOM/Valle, April 1, 2019 (U.S. Dist. Court, S.D. Florida)