



Foreign Accounts Penalty Case Heads to Supreme Court

By Alicea Castellanos, CPA

Tax filing – and penalties – for foreign accounts may soon be the subject of a major legal decision.

The U.S. Supreme Court plans this fall to hear [*Bittner v. U.S.*](#) This case presents a conflict over statutes under the Bank Secrecy Act (BSA). The question is whether a “violation” under the BSA is the failure to file an annual Report of Foreign Bank and Financial Accounts (FBAR), no matter the number of foreign accounts or whether there is a separate violation for each account that isn’t properly reported.

The 1970 BSA initially charged the U.S. Treasury Department with collecting information from U.S. persons who have financial interests in or signature authority over financial accounts maintained with financial institutions outside the U.S. In 2003, the Treasury delegated enforcement to the Internal Revenue Service. Although only willful violations were initially subject to penalty, Congress amended the act in 2004 to include penalties for non-willful violations.

Regulations require filing a single annual FBAR for anyone with an aggregate balance over \$10,000 in foreign accounts. The penalty for non-willful violation is up to \$10,000.

Concerning the case in question, Alexandru Bittner was born in Romania in 1957, immigrated to the United States in 1982 and became a citizen five years later. He returned to Romania in 1990, where he became a successful businessman and investor. He lived there for more than 20 years and was unaware that he was required to file U.S. income tax returns or FBARs. After returning to the United States in 2011, he engaged an accountant to prepare and file the returns and FBARs.

The IRS determined that he had failed to timely file FBARs for 2007 through 2011 and concluded that his delinquency was non-willful but still sought to impose a maximum penalty. The agency asserted that he had violated the Bank Secrecy Act 272 times and found him liable for a combined penalty of \$2.72 million.

Although a federal court in the Eastern District of Texas sided with Bittner, saying the proper penalty was \$50,000, the government appealed and won in the Fifth Circuit Court of Appeals. It agreed with the IRS that there was a separate violation for each foreign account not timely reported on an FBAR.

Bittner is now appealing to the U.S. Supreme Court. The conflict now arises given a decision of the Ninth Circuit, which held in materially similar case ([*United States v. Boyd*](#)) that when an untimely but accurate FBAR is filed, the IRS could impose only one non-willful penalty, no matter the number of accounts.

A decision upholding the Ninth Circuit's interpretation could impact other BSA penalties.

Alicea Castellanos, CPA, is the CEO and founder of Global Taxes LLC. Alicea provides personalized U.S. tax advisory and compliance services to high net worth families and their advisors. She specializes in U.S. tax planning and compliance for non-U.S. families with global wealth and asset protection structures, which include non-U.S. trusts, estates and foundations that have a U.S. connection. In 2021, Alicea was the Gold Winner of Citywealth's 2021 Powerwomen Awards in the category USA - Woman of the Year - Business Growth (Boutique).