



# FBAR Penalty Case Workshop

05/30/2013

OVDI Opt-Out & Removal  
Part 1 of 2

Area FBAR Coordinators (b) (6)

(b) (6)

1

You need to Allow the Evidence to Guide the FBAR Investigation. If the evidence tends to show willful conduct by the person, then continue to gather evidence to prove Willful FBAR violations; however, if the Evidence tends to show Non-Willfulness, then at some point during the FBAR Investigation you will shift the focus to evaluating whether the person has Reasonable Cause for the FBAR violations. At what point you have gathered enough information to make a decision about the direction of the FBAR Investigation heavily depends upon the facts of the case.

## **Investigating FBAR Violations**

- The **Goal** of the **FBAR Penalty Investigation** is to **Gather Evidence** to Arrive at a **Decision** regarding the **Appropriate FBAR Penalties**
- **Consider Reasonable Cause From the Start of the Case**
  - Request Reasonable Cause Statement on Initial IDR # 1
  - For Clarity, Insist on a Written Statement from TP
- Many Investigations will result in Non-Willful Penalties Only because the **IRS cannot Prove Willfulness**
- **FBAR cases must be reviewed by FBAR Coordinators and approved by Counsel prior to issuance of an RAR.**

2

We are going to discuss some general FBAR Information in the next few Slides.

First FBAR is the acronym for the Foreign Bank and Financial Account Report, Form TD F 90.22-1

and it is NOT an IRS Form (TD = Treasury Department Form)

FBAR refers to both the form itself and the civil penalties for failing to file the form.

Next the FBAR Penalty Case File is a Separate Case File.

The general Authority for the Secretary of the Treasury to require US persons to keep FBAR records and file reports of their foreign transactions is governed

Under Title 31 § 5314 as opposed to Title 26 Case Law.

The specific filing requirement for the FBAR is contained in the regulations for the Bank Secrecy Act, Treasury Regulations 31 CFR

1010.350 (formerly 31 CRF 103.24).

## **FBAR Statutes**

- **Due Date** is **June 30** of the Year Following the Reporting Year (Calendar-Year Reporting)
  - Example: 2006 FBAR was due June 30, 2007, so the FBAR Penalty Statute Expires on June 30, 2013
- An **FBAR** is **Not Filed** Until FBAR is **Received** by DCC (Detroit Computer Center)
- Timely-Mailed-is-Timely-Filed Rule-**N/A to FBARs**
- FBAR Statute is 6YR and **Runs Whether FBAR Filed or Not**
- **Do Not use 872** to Extend FBAR Statutes instead use Special Statute Extension on FBAR Library Website

3

The monetary penalty may not exceed \$10,000 per Non-Willful Violations per Account.

Where the violation is willful, the penalty is the greater of \$100,000 or 50% of the balance in the account on the date of violation.

The Date of Violation is the Due Date of the FBAR.

No FBAR Penalty is asserted if there is

- 1) Reasonable Cause for the Violation **and**
- 2) The TP files a correct FBAR

Any FBAR Penalty is only asserted on one entity or person at a time and it cannot be a joint penalty assessed on both the husband and wife together.

Only one SSN can have an FBAR Penalty so if a Husband has one foreign account in his name and a wife has a Foreign Account in her name two separate FBAR Penalty case files must be done.

## **FBAR Penalty Case Steps**

- 1) Discover a potential FBAR violation
- 2) Secure a Related Statute Memorandum (RSM)-N/A OVDI  
- OVDI Cases Already Have Blanket RSMs
- 3) Establish the **2** FBAR Administrative Controls
- 4) Investigate the FBAR Penalty Case  
-Use the FBAR 4318 for Penalty Case Structure
- 5) Determine the Appropriate FBAR Penalty
- 6) **Document Penalty Decision** in a **Memorandum** to **Area Counsel** & **Attach 886A-Case Summary**
- 7) **Issue** Form 13449 (FBAR **RAR**) **only after** case file **reviewed** by FBAR Coordinators **&** FBAR Penalty **approved** by FBAR Area Counsel.
- 8) Close the case

4

**The Ultimate Goal** -of the Revenue Agent in an FBAR Penalty Case File is to Complete Step 6)

## **FBAR Administrative Controls**

- **Two separate administrative controls**
  - 1) Title 31 **DCC Database Controls**-Maintained by DCC
  - 2) Exam Controls on **ERCS**
- See the **ERCS Guide** for Details-MFT for FBAR is C6
  - Establish each FBAR Case Year on ERCS
  - Input the FBAR Penalty Statute Date
  - Charge Time-Directly to the FBAR Case

5

DCC (Detroit Computing Center) also known as ECC (Enterprise Computing Center) and Detroit

Establish DCC database controls first (see next slide)...then, ERCS controls. Copy of FMD, blanket RSM and fax/email conformation should be attached to Form 5345-D when submitted for ERCS controls.

(b) (6) will discuss in detail later in this presentation about the ERCS Guide.

## **DCC Database Controls for OVDI** **Opt-Outs & Removals**

- IRM 4.26.17.3
- FBAR Monitoring Document (FMD)-**Form 13536**
  - Case Name
  - Owner of the Foreign Account
  - Representative
  - Examination information, including contact Information
  - Case Disposition
- Fax or email the FMD with RSM to DCC to establish the FBAR Case on the DCC Database
- **Send FMD** to Detroit as **Often as Necessary** to Update the **DCC Database Controls (Every Change)**

OOR Agents use blanket RSM (will show you later where to find).

Be aware that this procedure for OVDI Opt Outs differs than in regular FBAR cases whereby RSM must be submitted for TM approval and faxed/emailed to DCC to establish case.

Be sure to send an updated FMD when an FBAR case is reassigned from another Revenue Agent.

Change POA-Send New FMD

Change Statutes-Send New FMD

The FMD establishes the FBAR Case for OVDI Opt Outs when sent to the DCC (Detroit Computing Center) or ECC (Enterprise Computing Center) which are abbreviations for the same thing.

## **7 Elements Necessary To Prove In Any FBAR Court Case File**

- 1) **TP** was a **United States Citizen, Resident,** or **Person Doing Business** in the United States.
- 2) **TP** had a **Financial Interest** in, or **Signatory** or **Other Authority** over a **Bank, Securities** or **Other Financial Accounts** during the years in question.
- 3) **Bank** had **Balance > \$10,000** at **any time** in United States Dollars (USD).
- 4) **Bank** was **in a Foreign Country**.
- 5) **TP Failed** to **Disclose** the **Bank Account**.
- 6) **Failure** to **Report** was **Willful** or **Non-Willful**.
- 7) The **Penalty Amounts** were **Proper**.

7

These Steps are Outlined in the John McBride Case File that we will discuss later that Contain the 7 Necessary Elements To Prove In Any FBAR Court Case.

**(b) (6)** will now Show the Tools Available at the FBAR Library Website.

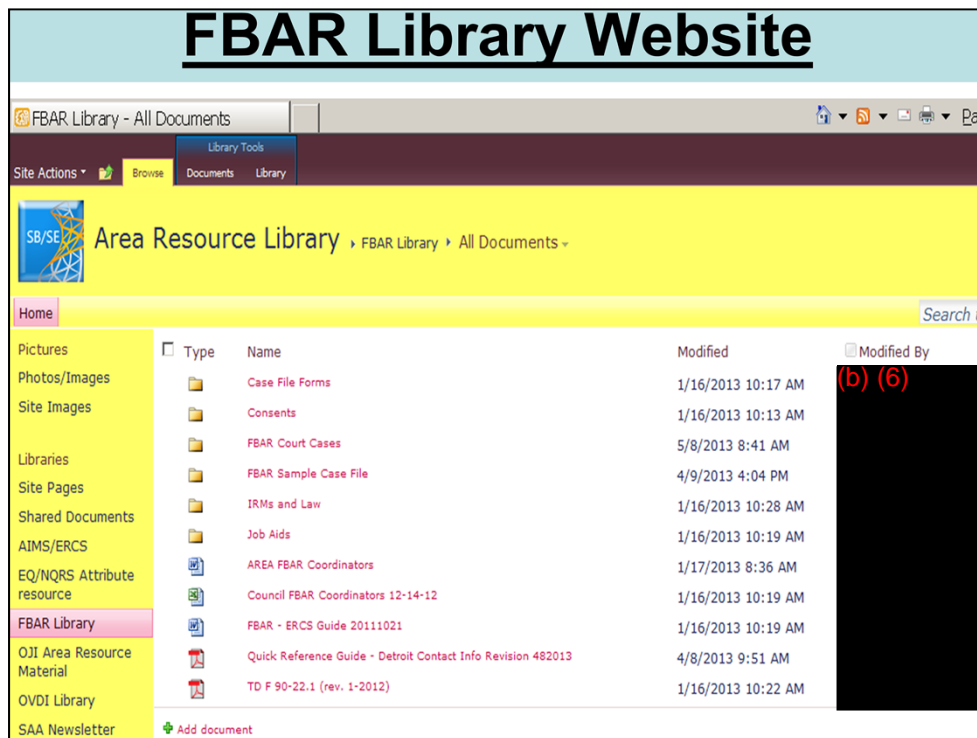


## (Tools Available)-NEW--FBAR LIBRARY Website

- [FBAR Library - All Documents](#)
  - FBAR ERCS Guide
  - FBAR Quick Reference Guide
- Case File Forms
  - FBAR Form 4318
  - FBAR\_Citizenship\_Lead\_Sheet
  - Penalty\_FBAR\_Lead\_Sheet
- Consents
- FBAR Court Cases
- FBAR Sample Case File
- IRMs and Law
- Job Aids
  - FBAR Penalty Mitigation Comps After 10222004.xls
  - Official exch rates revised 1282013.xls
  - Closing FBAR Case with “No Action” Due to Statute Issue  
When Other Years Remain Open<sup>8</sup>

These are just a few of the FBAR Tools available on the FBAR Library Website.

(b) (6) will now move the meeting show the real FBAR Library Website.



(Tools Available)-NEW--FBAR LIBRARY Website

FBAR Library - All Documents

FBAR ERCS Guide

FBAR Quick Reference Guide

Case File Forms

FBAR Form 4318

Form 13449

FBAR\_Citizenship\_Lead\_Sheet

Penalty\_FBAR\_Lead\_Sheet

Consents

FBAR Court Cases

FBAR Sample Case File

IRMs and Law

Job Aids

FBAR Penalty Mitigation Comps After 10222004.xls

Official exch rates revised 1282013.xls

Closing FBAR Case with "No Action" Due to Statute Issue When Other Years Remain Open

# FBAR-ERCS Guide

## FBAR-ERCS Guide

**Background:**

In the past, FBAR files typically were not established on ERCS. Time spent working the FBAR issues were charged to activity code 545. This activity code is a miscellaneous direct exam time (DET). The problem with this is that the time would not be applied to a specific taxpayer or year, and more importantly would mean that statute expiration dates could not be properly tracked. With increased focus on offshore compliance issues, FBAR case files are becoming more common, and therefore agents and managers need a better way to track these cases. Establishing the FBAR examinations on ERCS will not have an affect on AIMS. This guide was designed to assist the examiner and secretary with establishing and closing these exams on ERCS.

**Agent Duties:**

Before commencing an FBAR examination, the examiner is required to get the Territory Manager's approval via a Related Statute Memorandum (RSM). Without this approval, the agent is to not question the taxpayer regarding issues related to FBARs. Upon receiving approval, the examiner should prepare a Form 5345-D to establish the case on ERCS for proper case tracking. Input time to the established modules on your 4502 as opposed to AC 545. Keep in mind, you may have to seek a separate RSM for a spouse as well as establish a separate ERCS record.

Enter the following information on the Form 5345-D (the pro-forma version attached on page 2 already contains some of this information):

1. Fill-in the taxpayer's name and address. (Only TPH or TPW)
2. Check the "Control Non-AIMS DET Item" box
3. Enter the PBC, SBC, EGC, and ERCS examiner information
4. Enter the taxpayer's TIN (TPH or TPW's as appropriate)
5. The MFT is C6
6. For the type of form, enter "FBAR"
7. In the middle section of the form, enter all of the FBAR years being established for the listed taxpayer as follows in this table:

Tax Period	200412	200512	200612	200712	200812
Activity Code	545	545	545	545	545
Source Code	99	99	99	99	99
Status Code	10	10	10	10	10
Statute Date*	06-30-2011*	06-30-2012*	06-30-2013	06-30-2014	06-30-2015
Tracking Code	Same as Key	Same as Key	Same as Key	Same as Key	Same as Key
Project Code	Same as Key	Same as Key	Same as Key	Same as Key	Same as Key
Related Return	Y	Y	Y	Y	Y 10

\*If FBAR statute extensions were received ensure that you input the extended ASED in place of the default.

### Agent Duties:

Before commencing an FBAR examination, the examiner is required to get the Territory Manager's approval via a Related Statute Memorandum (RSM). Without this approval, the agent is to not question the taxpayer regarding issues related to FBARs. Upon receiving approval, the examiner should prepare a Form 5345-D to establish the case on ERCS for proper case tracking. Input time to the established modules on your 4502 as opposed to AC 545. Keep in mind, you may have to seek a separate RSM for a spouse as well as establish a separate ERCS record.

Enter the following information on the Form 5345-D (the pro-forma version attached on page 2 already contains some of this information):

1. Fill-in the taxpayer's name and address. (Only TPH or TPW)
2. Check the "Control Non-AIMS DET Item" box
3. Enter the PBC, SBC, EGC, and ERCS examiner information
4. Enter the taxpayer's TIN (TPH or TPW's as appropriate)
5. The MFT is C6
6. For the type of form, enter "FBAR"
7. In the middle section of the form, enter all of the FBAR years being established for the listed taxpayer as follows in this table:

# FBAR-ERCS Guide

Examination Request-ERCS (Examination Returns Control System) Users (IRM References: 4.4.23, 4.10.5.4)													
Transcripts Reviewed (Initial box): <input type="checkbox"/> AMDISA <input type="checkbox"/> IMFOLT/R/BMFOLT <input type="checkbox"/> INOLE(G/T)			Use an AIMS label if available Taxpayer Name/Name Control: <u>Taxpayer, Joe</u>										
Check One Box Only <input type="checkbox"/> Request AIMS Control Masterfile <input type="checkbox"/> Control Penalty Investigation <input type="checkbox"/> Request AIMS Control Non-Master File			<input checked="" type="checkbox"/> <b>Control Non-AIMS DET Item</b> <input type="checkbox"/> Control Collateral Examination										
PBC: <u>XXX</u> SBC: <u>XXXXX</u> EGC: <u>XXXX</u>			Examiner's ERCS Emp ID: <u>XXXX</u>			Examiner's ERCS Emp. Name: <u>Agent, Revenue</u>							
TIN: <u>123-45-5789</u> MFT: <u>C6</u> Form Type: <u>FBAR</u> (A separate P-6346D is required for each TIN and MFT)													
Tax Period (YYYYMM)	Activity Code	Source Code	Status Code	Statute Date	Tracking Code or asterisk	Project Code or asterisk	Tech Svcs Code	Claim Amount (Required if Source Code is 30)	Special Message/ Push Code (Required if Source Code is 22, 24, 46)	POD	Related Return Indicator (Enter code if/whether filed)	Aging Reason Code if applicable	Input on ERCS (Initial and Date)
1 200412	545	99	10	06-30-2011*	1234	5678					Y		
2 200512	545	99	10	06-30-2012*	1234	5678					Y		
3 200612	545	99	10	06-30-2013	1234	5678					Y		
4 200712	545	99	10	06-30-2014	1234	5678					Y		
5 200812	545	99	10	06-30-2015	1234	5678					Y		
<input type="checkbox"/> TEFRA Indicator: (MFTs 06 and 36 only) (Y=Yes, N=No, S=Survey) <input type="checkbox"/> Do you want the original return? (Y/N) (Y= Original return, N= Do not want original return) <input type="checkbox"/> Do you want labels? (Y/N) (Y= will receive 5545 and labels, N= will not receive 5545 and labels) <input type="checkbox"/> Joint Committee? (Y/N) <input type="checkbox"/> Foreign Control? (Y/N) <input type="checkbox"/> Is case LMSB/CIC? (N/P/S) (N = Not applicable, P = Primary/Secondary, S = Support) <input type="checkbox"/> Control PBC (Used for Collateral Exams Only)						<b>RELATED RETURN INFORMATION</b> (Enter information for Primary/Key Case)							
Printed Name _____						Taxpayer Name: <u>Taxpayer, Joe and Jane</u>							
Examiner's Signature _____						TIN: <u>123-45-5789</u> MFT: <u>C6</u> Tax Period: <u>200812</u> Source Code: <u>XXX</u>							
Date _____						Tracking code: <u>1234</u> Project Code: <u>5678</u> Aging Reason Code: <u>XXX</u>							
						Reason for Request: <u>TO CONTROL AN FBAR INVESTIGATION RELATED TO A TREATY (or CVDI OPT-OUT/REMOVAL) CASE</u>							
						Follow-Up Actions: _____							
						11							
Form <b>5345-D</b> (Rev. 01-2011)    Catalog Number 39204U    publish.no.irs.gov    Department of the Treasury-Internal Revenue Service													

MFT Code is C6

## FBAR QUICK REFERENCE GUIDE

### Detroit Computing Center (DCC) Contact Information

Item	Where to Send
<b>Related Statute Memorandum (RSM) FBAR Monitoring Document (FMD) Consent to Extend FBAR Statute</b>	Email: *SBSE BSA Compliance-FBAR Penalty Coordinator Fax: 313-234-2278 <b>NOTE:</b> Email is preferred/most reliable, so use RSMs and FMDs with electronic signatures. For handwritten signatures, consider scanning the document or E-Faxing it to yourself. Then forward the pdf file via email.
<b>Delinquent/Amended FBARs</b>	Internal Revenue Service - CTR Operations Edit and Error Resolution Mailroom P.O. Box 32621 Detroit, MI 48232-0621
<b>Checks to pay for FBAR Penalties</b>	<b>If sent by USPS</b> Internal Revenue Service Attention: FBAR Coordinator Roylyn Lapko/Nancy Beasley P.O. Box 33115 Detroit, MI 48232-0115  <b>If sent by UPS [Overnight for priority items]</b> Internal Revenue Service Attention: FBAR Coordinator Roylyn Lapko/Nancy Beasley 985 Michigan Ave, 4th floor Detroit, MI 48226
<b>Closed Case Files</b>	<b>If file weighs 13 oz. or less [use USPS]</b> Internal Revenue Service Attention: FBAR Coordinator Roylyn Lapko/Nancy Beasley P.O. Box 33113 Detroit, MI 48232-0113  <b>If file weighs more than 13 oz. [use UPS]</b> Internal Revenue Service Attention: FBAR Coordinator Roylyn Lapko/Nancy Beasley 985 Michigan Ave, 4th floor Detroit, MI 48226

12

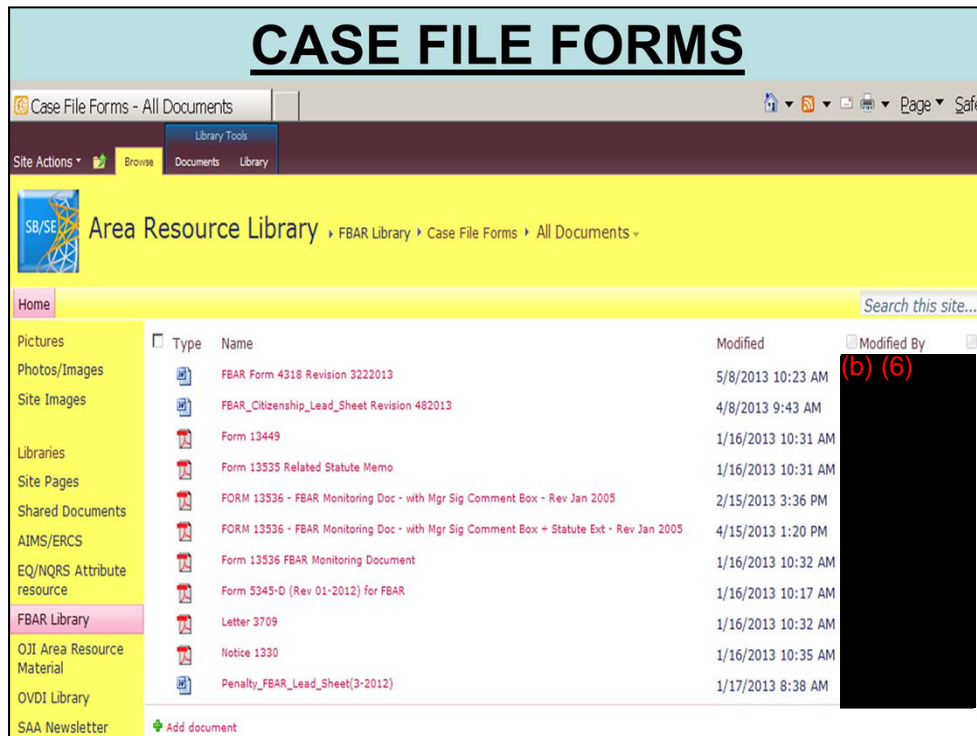
**Note:** Send unagreed, appealed cases to Appeals through Tech Services

The FBAR Quick Reference Guide Shows where the RSM & FMD & Statutes Go by E-mail or Fax.

Delinquent/Amended FBARs Mailed to.

Checks to Pay FBAR Penalties Mailed to

Closed Case Files Go to depending on being less than or more than 13 ounces in weight.



Click into FBAR Form 4318 showing its Structure and Links.

The Form 4318 FBAR was designed with the Revenue Agent in mind putting the smaller necessary parts of the case file for Counsel Review up Front and the more extensive and larger parts in the back of the case file in the 600 Sections.

Click into the FBAR Citizen Lead Sheet to Explain the Goal

Click into the Form 13449 (FBAR RAR) to explain definition of boxes on page 2 and how they relate to page 1.

# FORM 4318-FBAR

FBAR Examination Workpapers – Index		Examiner	Grade	Total Time Charged to Case		
Taxpayer name and address (city, state, ZIP code)		Taxpayer's TIN TP Business Phone: TP Cell Phone: TP Fax Number:		Mutual Commitment Date (MCD) (mm/yyyy)		
POA contact information (Name, street address, city, state, ZIP code)		Tax Return Form Number		Penalty Period(s)		
Phone:						
Fax:						
Reference	Description					
Administrative/Planning	100	Activity Record—Form 9984—Examining Officer's Activity Record—RG's Lead Sheet Available				
	101	FMD, Form <a href="#">13536</a> —[Requires manager's "date closed from group"]—(Emailed or Faxed)				
	102	(RSM) Related Statute Memorandums— <a href="#">Form 13535</a>				
	103	Counsel Approval Memorandum, Legal Opinions & Title 31 Summons				
	104	Summary Memorandum & 886A-Case Summary-Explaining FBAR Violations & Penalty Computations				
	105	<a href="#">Form 13449</a> (FBAR Penalty RAR Under Title 31) & Payments TP Made(Copies)-Do Not Use <a href="#">Form 3244</a>				
	106	<a href="#">Form ID F 90-22.1</a> - Secured Delinquent FBAR's (Copies or Facsimiles of Audit Years Filed )				
	107	Statute Extensions (if Applicable)- <a href="#">Consent To Extend FBAR Statute</a>				
	108	(POA) Power of Attorney— <a href="#">Form 2848</a>				
	109	CBRS Research (FBAR Facsimiles Filed For Years Not Under Audit)				
	110	<a href="#">Form 906</a> (if Applicable)				
	111					
	112					
	113					
	114					
115						
Enlist	200	Read <a href="#">IRM 4.26.16-FBAR Law</a> & <a href="#">IRM 4.26.17-FBAR Procedures</a> for Updated FBAR Penalty Case Details.				
	205	Fraud Development Lead Sheet (For <a href="#">Willful FBAR Penalty &amp; Document FTA Approval</a> )				
Reference	Description	Title 31-FBAR Penalty Assessments-Form 13449				
		TY	TY	TY	TY	TY
		2006	2007	2008	2009	2010
		2011				
Identified Issues	400	Penalty FBAR Lead Sheet				
	401	FBAR Citizenship Lead Sheet				
	402					
	403					14
	404					
Form 4318-FBAR – Examination Workpapers Rev. 03/2013		Index			Index #: 000-1.1	

Click into FBAR Form 4318 showing its Structure and Links.

The Form 4318 FBAR was designed with the Revenue Agent in mind putting the smaller necessary parts of the case file for Counsel Review up Front and the more extensive and larger parts in the back of the case file in the 600 Sections.

# FORM 4318-FBAR

FBAR Tax Examination Workpapers Index - <i>Continued</i>							
Reference	Description	TY	TY	TY	TY	TY	TY
Additional Issues	500						
	501						
	502						
	503						
	504						
	505						
	506						
	507						
	508						
	509						
	510						
	511						
	512						
	513						
514							
Miscellaneous	600	FBAR Penalty Mitigation Computations (After 10/22/2004) Spreadsheet-(if Applicable)					
	601	Foreign Account Records (Copies of <a href="#">Relevant Foreign Bank Statements on Date of Violation</a> )					
	602	Analysis-Unreported Foreign Income & Tax Omitted (Attributable to Foreign Accounts at Issue)					
	603	TAX RETURNS [Copies Original Related Forms 1040 (Pages 1 & 2, & Schedule B)] & 1040Xs					
	604	RAR (Revenue Agent Report) for Related Forms 1040					
	605	Correspondence (Letters <a href="#">929</a> , <a href="#">937</a> , <a href="#">4265</a> , <a href="#">3709</a> , & <a href="#">3800</a> )					
	610	(IDR) Information Document Requests—Form 4564—RGS Lead Sheet Available					
	615	Official Exchange Rates Spreadsheet (if Applicable)					
	640	-					
	645	-					
650	Case Building Cover Sheet & Materials (Form <a href="#">5345-D</a> )						
							15

Click into FBAR Form 4318 showing its Structure and Links.

The Form 4318 FBAR was designed with the Revenue Agent in mind putting the smaller necessary parts of the case file for Counsel Review up Front and the more extensive and larger parts in the back of the case file in the 600 Sections.



(b)(3) 6103(a)



The **Goal** --To **establish the Taxpayer as a U.S. Person**-- Defined in Title 31 CFR § 1010.350 and **Subject to an FBAR filing requirement** for Specific Calendar Years.

RA needs to secure the Proof Necessary that the TP is either a U.S. Citizen or U.S. Resident Alien.

The **Taxpayer** is a **United States (US) Person as defined in Title 31** CFR § 1010.350, :Title 31 C.F.R. § 1010.100 (iii), **and Title 26 U.S.C. § 7701(b)** for FBAR filing requirement purposes and verified by IRS Sources of IDRS Command Code DDBKD showing Citizenship Code B-Legal Alien-Authorized to Work during the calendar years 2006, 2007, and 2008.

# FBAR\_Citizenship\_Lead\_Sheet

FBAR Citizenship Lead Sheet	
<p><i>The following techniques are not intended to be all-inclusive nor are they mandatory steps to be followed. Judgment should be used in selecting the techniques that apply to each taxpayer.</i></p> <p><b>The Goal –To establish the Taxpayer as a U.S. Person-- Defined in Title 31 CFR § 1010.350 and Subject to an FBAR filing requirement for Specific Calendar Years.</b></p> <p><b>RA needs to secure the Proof Necessary that the TP is either a U.S. Citizen or U.S. Resident Alien</b></p>	
<b>Audit Steps:</b> (Document audit steps taken or to be taken.)	<b>Workpaper Reference</b>
1. Get a <b>Copy of United States (U.S.) Passport</b> with photo and Passport Number (if Applicable and Available) for the Relevant FBAR Years	N/A
2. Get a <b>Statement by the Taxpayer</b> that shows he is a <b>U.S. Citizen</b> , either an <b>admission of citizenship</b> , or a statement about the location of the person's birth, is acceptable for the Relevant FBAR Years.	N/A
3. <b>Print IDRS Command Code DDBKD</b> (Requested by Counsel) which has the indicator (Code "A") that means the person is a U.S. Citizen for the Relevant FBAR Years.  <b>(See Instructions on How to Do Command Code DDBKD at 401-2.1)</b>  <b>The Citizenship Codes on DDBKD and MFTRAU are Defined as Follows:</b> <b>A—United States (US) Citizen</b> <b>B—Legal Alien—Authorized to Work</b> <b>C—Legal Alien—Not Authorized to Work</b> <b>D—Other Alien</b> <b>E—Alien Student—Restricted Work Authorized</b> <b>F—Conditionally Legalized Alien—Status Not Known</b>	See 401-2.1 For Instructions  Example at 401-2.3
4. <b>Print IDRS Command Code MFTRA U</b> to request a Social Security Administration transcript called <b>NUMIDENT</b> on an individual which has the indicator (Code "A") that means the person is a U.S. Citizen for the Relevant FBAR Years.  <b>(See Instructions on How to Do Command Code MFTRAU at 401-2.2)</b>	See 401-2.2 For Instructions  Example at 401-2.4 & 401-2.5
5. Get a <b>Statement by the Taxpayer</b> that he was a <b>U.S. Resident Alien</b> during the Relevant FBAR Years.	N/A
6. Get <b>Other Records</b> that shows the <b>TP has U.S. Resident Alien Status</b> like addresses on a drivers license, IDRS addresses, voting registration records, and statements by other witnesses, such as return preparer, or family members, about their knowledge of where the person lived during the Relevant FBAR Years.	N/A
	17
FBAR Citizenship Lead Sheet Rev. 03/2013	Workpaper # 401 -1.2

The DDBKD is a useful IDRS Tool that Area Counsel likes to see that labels the Taxpayer as

A= US Citizen

B=Legal Alien-Authorized to Work

C=Legal Alien-Not Authorized to Work

D=Other Alien

E= Alien Student-Restricted Work Authorized

F=Conditionally Legalized Alien-Status Not Known

If the citizenship code is blank on the DDBKD, it may show on a MFTRA U (NUMIDENT)

Sanitized Copies of Real Life Examples of both the DDBKD and MFTRA U are in the Sample Case File 401 Workpaper Section.

# FBAR\_Citizenship\_Lead\_Sheet

FBAR Citizenship Lead Sheet	
<p>7. <b>Determine if the Taxpayer has Resident Alien Status</b> which is determined in IRC Section 7701 by <b>Meeting any 1 of 3 Tests:</b></p> <p>i) IRC 7701(b)(1)(A)(i)-<b>Lawfully Admitted For Permanent Residence- "Green Card" Test.</b></p> <p>ii) IRC 7701(b)(1)(A)(ii)-<b>Substantial Presence Test</b></p> <p>iii) IRC 7701(b)(1)(A)(iii)-<b>First Year Election</b></p> <p><b>IRC Section 7701(b)(3) Defines the Substantial Presence Test</b> and that an individual meets this test if the individual is <b>present in the United States for at least 31 days during the current year and at least 183 days for the three-year period ending on the last day of the current year using a weighted average</b></p>	N/A
<p>8. Determine days for which an alien is an exempted individual for the substantial presence test. See IRC §§7701(b)(3)(D)(ii), 7701(b)(7), and definitions in regulations §301.7701(b)-3(b).</p>	N/A
<p>9. To possibly confirm that the taxpayer has U.S. Resident Alien Status <b>(Not Necessary if the previous audit steps show the TP is a US Person)</b> the RA can request on any Case to Send <b>Form 13931</b> via secure e-mail message attachment to <b>"SSE International TECS Coordinator"</b> to get the taxpayer's TECS (Treasury Enforcement Communication System). The Historical Travel Information per the <b>Requirements and Instructions</b> can be found at <b>SB/SE TECS Historical Travel Information Website</b> and Guidance at <b>IRM 5.1.18.14.7</b> &amp; the <b>Attached Workpapers 401-3.1 and 401-3.2</b>.</p> <p><b>TECS historical travel information will do the following:</b></p> <ol style="list-style-type: none"> <li>1. Learn possible address information to attempt taxpayer contact or identify assets</li> <li>2. Determine a taxpayer's status regarding his/her contention regarding his/her US residency or non-residency</li> <li>3. Confirm the validity of information on the taxpayer's returns or collection information statement.</li> </ol> <p>(b) (7)(E)</p>	<p>N/A</p> <p>See 401-3.1 &amp; 401-3.2 For instructions</p>
18	
<p>FBAR Citizenship Lead Sheet Rev. 03/2013 <span style="float: right;">Workpaper # 401 -1.3</span></p>	

## What is Treasury Enforcement Communication System (TECS)?

TECS is a database maintained by the Department of Homeland Security, and it is used extensively by the law enforcement community. It contains information about individuals and businesses suspected of, or involved in, violation of federal law. TECS can provide useful information about taxpayers so employees can attempt taxpayer contact or locate asset information.

(b) (7)(E)

# OVDI-OOR- Penalty FBAR Lead Sheet

**Taxpayer Name:** \_\_\_\_\_ **Examiner:** \_\_\_\_\_  
**TIN:** \_\_\_\_\_ **Date:** \_\_\_\_\_  
**Form:** TD F 90-22.1  
**Tax Year (s):** \_\_\_\_\_

<b>OVDI-OOR: FBAR Penalty Investigation (Post 10/22/04) Lead Sheet</b>				
Tax Period	Previously Assessed	Per Exam	Adjustment	Reference
<b>Conclusion:</b> <i>(Reflects the final determination on the issue.)</i>				
<i>The following techniques are not intended to be all-inclusive nor are they mandatory steps to be followed. Judgment should be used in selecting the techniques that apply to each taxpayer.</i>				
<b>Audit Steps:</b> <i>(Document audit steps taken or to be taken.)</i>				<b>Workpaper Reference</b>
<ol style="list-style-type: none"> <li>1. When there are definite indications that the taxpayer will opt out or be removed from the OVDI program, insure that all steps have been taken to insure the following:               <ol style="list-style-type: none"> <li>a. Waivers to extend the statute for FBAR penalty assessments have been secured for all applicable periods. See Step 15.</li> <li>b. Bank statements and other documents impacting account balances and transactions have been obtained through OVDI to the fullest extent possible; remind taxpayers of the requirement to cooperate, even in OOR cases.</li> <li>c. The OVDI TA (Technical Advisor) should be involved in determining the potential OOR examination implications. In addition, the OVDI TA should review all OORC submission packages prior to submission to the OORC for FBAR penalty computation accuracy, reasonable cause evaluations, open statute determinations, and general assistance in preparing the OORC submission package.</li> </ol> </li> <li>2. General Info – <u>Report of Foreign Bank &amp; Financial Accounts, TD-F 90-22.1 [FBAR]:</u> <ol style="list-style-type: none"> <li>a. FBAR Form TD-F 90-22.1 is due <b>June 30</b> following the calendar year in which reporting requirements were met.</li> <li>b. FBARS are Treasury forms, not regular IRS forms. Form TD-F 90-22.1 can be found in the IRS Forms Repository by entering Catalog # 12096D.</li> <li>c. FBARS are filed with the Enterprise Computing Center in Detroit [ECC], not IRS campuses.</li> <li>d. Income tax audits = Title 28 examinations; FBAR inquiries = Title 31 examinations.</li> <li>e. FBAR Code &amp; Regs - 31 USC §§ 5314 &amp; 5321; 31 CFR §§ 1010.350 &amp; 1010.306 &amp; 1010.420 &amp; 1010.820 &amp; 1010.840. Formerly: 31 CFR §§ 103.24 &amp; 103.27 &amp; 103.32 &amp; 103.57 &amp; 103.59, respectively.</li> <li>f. April 2003, Title 31 FBAR enforcement authority was delegated from FinCEN to IRS.</li> <li>g. Info gathered in a Title 26 audit cannot be used in a Title 31 inquiry <b>unless</b> there is a Related Statute determination. See Step 4.</li> <li>h. Penalties for periods after 10/22/2004 are computed differently than under prior law.</li> </ol> </li> </ol>				

Use “OVDI-OOR: FBAR Penalty Investigation (Post 10/22/04) Lead Sheet” for OVDI Opt-Out and Removal cases. This lead sheet is located on in the OVDI Library – Opt-Out and Removals – FBARs folder.

# Consents

Consents - All Documents

Site Actions | Browse | Documents | Library | Wade Timothy E

Area Resource Library > FBAR Library > Consents > All Documents

Home | Search this site...

Type	Name	Modified	Modified By	Checked Out To
	Consent to Extend FBAR Statute 4-23-12	1/16/2013 10:16 AM	(b) (6)	
	Del Ord-25-13	1/16/2013 10:16 AM		
	sample 2006 FBAR SOL Extension Request Cover Letter	1/16/2013 10:16 AM		20

**Do Not Use Form 872**

**Instead use Special FBAR Consent form Found on FBAR Library Website under Consents.**

# FBAR Court Cases

FBAR Court Cases - All Documents

Library Tools

Site Actions ▾ Browse Documents Library

SB/SE Area Resource Library ▸ FBAR Library ▸ FBAR Court Cases ▸ All Documents ▾

Home

<input type="checkbox"/>	Type	Name	Modified	<input type="checkbox"/> Modified By
<input type="checkbox"/>		McBride Case <span>NEW</span>	5/8/2013 8:42 AM	(b) (6)
<input type="checkbox"/>		Williams Case <span>NEW</span>	5/8/2013 8:50 AM	

Add document

21

Two FBAR Court Cases we will briefly discuss!

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH CENTRAL DIVISION	
UNITED STATES OF AMERICA,  <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> JON MCBRIDE,  <p style="text-align: center;">Defendant.</p>	<b>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER</b>  Case No. 2:09-cv-378 DN  District Judge David Nuffer
<p>Plaintiff United States of America brought this case to collect a civil penalty assessed to Defendant Jon McBride for his alleged willful failure to report his interest in four foreign bank accounts during tax years 2000 and 2001 as required under 31 U.S.C. § 5314 and related regulations. The matter was tried to the bench on May 21-22, 2012, and the court took the matter under advisement. The parties have submitted competing proposals as to the facts and legal conclusions that should be reached.<sup>1</sup> Having carefully considered the parties' proposals, along with the record of the hearing and applicable law, the court enters the following findings of fact and conclusions of law.</p> <p style="text-align: center;"><b>FINDINGS OF FACT</b></p> <p><b>A. McBride Was the Co-Owner of The Clip Company.</b></p> <p>1. Jon McBride is a citizen of the United States, was a citizen of the United States in 2000 and 2001, and has been since at least 1999. (Tr. 310:12-15, May 22, 2012).</p>	
<p><small><sup>1</sup> Proposed Findings of Fact and Conclusions of Law [submitted by United States of America], docket no. 101, filed July 23, 2012; Defendant Jon McBride's Proposed Findings of Fact and Conclusions of Law, docket no. 104, filed August 22, 2012.</small></p>	

The John McBride FBAR Willful Penalty Case is a very in-depth look into FBAR case law covering the 7 Elements Necessary To Prove in Any FBAR Court Case as stated previously in Slide 7.

**The Court was unwilling to excuse McBride's failure to read the tax return in full when signing, citing knowledge of a "plainly evident duty" to do so.**

McBride also had actual knowledge because the marketing materials from the financial management firm explicitly noted a duty to report interest in foreign accounts, the court said.

**McBride's use of a tax return preparer to prepare his personal federal income tax returns did not negate his willfulness**, the court said, because MrBride had **deliberately kept the information from the accountant**, which at a minimum **constitutes Reckless Disregard**.

**"As Long as the accountant is asking the question, once you don't give those records, you're done. It's a great case"**

**An improper motive or bad purpose is not necessary to establish FBAR Willfulness in the civil context as opposed to the criminal context.**

The **One District Court Case** that has directly addressed the question of **willfulness** and the **burden of proof** in a **Civil FBAR penalty case, *United States v. Williams***, concluded that the United States' burden of proof was **"the preponderance of the evidence"** on all questions before the court, including the question of whether the **taxpayer's failure to report in that case was "willful."**

**UNPUBLISHED**  
UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
No. 10-2230

UNITED STATES OF AMERICA,  
Plaintiff - Appellant,  
v.  
J. BRYAN WILLIAMS,  
Defendant - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Liam O'Grady, District Judge. (1:09-cv-00437-LO-TRJ)

Argued: March 21, 2012 Decided: July 20, 2012

Lost in District Court, but **parts of opinion are favorable.**

**Defined Willfulness:**

"[w]here willfulness is a statutory condition of civil liability, it is generally taken to cover not only knowing violations of a standard, but reckless ones as well." Safeco Ins. Co. of Am. v. Burr, 551 U.S. 47, 57 (2007)

**Standard of Proof – Preponderance of the Evidence**

Did not disturb lower court definition of willfulness or standard of proof

**Approved rule that reckless disregard satisfies willfulness requirement for civil penalties**

Held that finding of lack of willfulness was clearly erroneous and the Issue is **intent – not motive**

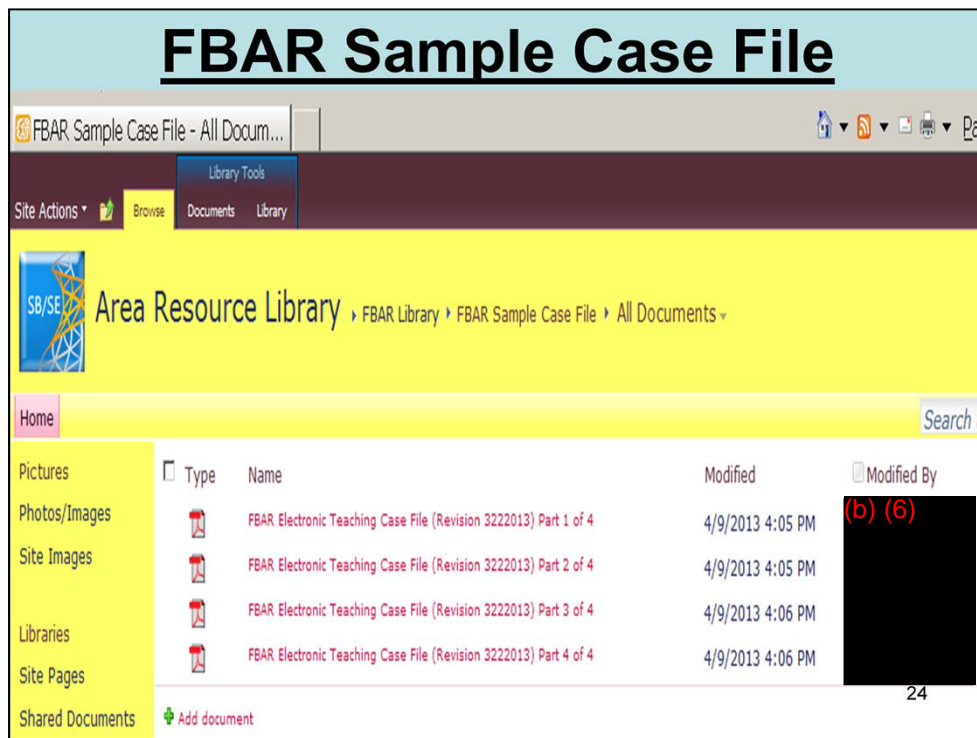
**Signature of return charges TP with knowledge of contents**

"at a minimum" line 7a's reference on Form 1040 Schedule B Instructions to Form TD F 90-22.1 put him on inquiry notice of filing requirement

TP testimony that he never read the words on the returns shows a **"conscious effort to avoid learning of filing requirements"**

Thus, with a false "no" on Schedule B = willful blindness





**Part 1 of 4** –Detailed Examples 4318 (**Sections 100 Thru Section 105**)

100-Activity Record Sample, 101-FMD Form 13536, 102-RSM Form 13535  
 103-Counsel Approval Memorandum, 104-Summary Memorandum & 886-A  
 ( Several Examples both Willful and Non-Willful)  
 105-Form 13449 (FBAR RAR)

**Part 2 of 4** -Detailed Examples 4318 (**Sections 106 Thru Section 400**)

106-Delinquent FBARS Secured, 107-Statute Extensions (Examples with  
 Letters to request & Contacts to get Copies of Real FBARs), 108-POA  
 109-CBRS Research, 110-Form 906, 400-Penalty FBAR Lead Sheet

**Part 3 of 4** -Detailed Examples 4318 (**Sections 401 Thru Section 602**)

401-FBAR Citizenship Lead Sheet-(Examples DDBKD TECS Request  
 Instructions)

600-FBAR Penalty Mitigation Spreadsheet

601-Foreign Account Records,602-Analysis Unreported Foreign Income & Tax  
 Omitted Spreadsheet ( **Spreadsheet Examples of What Counsel Wants**)

**Part 4 of 4** -Detailed Examples 4318 (**Sections 603 Thru Section 650**)

603-Tax Returns, 604-RAR Related 1040, 605-Correspondence

610-IDR, 615-Official Exchange Rates Spreadsheet

650-Case Building-Form 5345-D (Do not recommend printing sample case file).

# FBAR Sample Case File

## INTRODUCTION-NOTES

The **FBAR Electronic Teaching Case File** is a **Teaching Tool for FBAR Cases** that was created in the South Atlantic Area using A **Custom Designed FBAR Form 4318** that is thought to be **comprehensive in detail to complete** the most **Complex FBAR Cases**; however, **Not all sections are Mandatory** for some of the **Simple FBAR Cases**

The **FBAR Form 4318** has built-in links to forms used and is **Organized into** the following **Sections**:

Form 4318 Workpaper Section	FBAR-Form 4318-Description
*100	Activity Record—Form 9984—Examining Officer's Activity Record—RGS Lead Sheet Available
*101	FMD, Form 13536—[Requires manager's "date closed from group"]—(Emailed or Faxed)
*102	(RSM) Related Statute Memorandums—Form 13535
*103	Counsel Approval Memorandum, Legal Opinions & Title 31 Summons
*104	Summary Memorandum & 886A-Case Summary-Explaining FBAR Violations & Penalty Computations
*105	Form 13449 (FBAR Penalty RAR Under Title 31) & Payments TP Made(Copies)-Do Not Use Form 3244
106	Form TD F 90-22.1- Secured Delinquent FBAR's (Copies or Facsimiles of Audit Years Filed )
107	Statute Extensions [If Applicable]- Consent To Extend FBAR Statute
108	(POA) Power of Attorney—Form 2848
*109	CBRS Research (FBAR Facsimiles Filed For Years Not Under Audit)
110	Form 906 (If Applicable)
200	Read IRM 4.26.16-FBAR Law & IRM 4.26.17-FBAR Procedures for Updated FBAR Penalty Case Details
205	Fraud Development Lead Sheet (For Willful FBAR Penalty & Document FTA Approval)
*400	Penalty FBAR Lead Sheet
*401	FBAR Citizenship Lead Sheet
600	FBAR Penalty Mitigation Computations (After 10/22/2004) Spreadsheet-(If Applicable)
*601	Foreign Account Records (Copies of Relevant Foreign Bank Statements on Date of Violation)
*602	Analysis-Unreported Foreign Income & Tax Omitted (Attributable to Foreign Accounts at Issue)
*603	TAX RETURNS [Copies Original Related Forms 1040 (Pages 1 & 2, & Schedule B)] & 1040Xs
*604	RAR (Revenue Agent Report) for Related Forms 1040
*605	Correspondence (Letters 929, 937, 4265, 3709, & 3800)
610	(IDR) Information Document Requests—Form 4564—RGS Lead Sheet Available
615	Official Exchange Rates Spreadsheet (If Applicable)
650	Case Building Cover Sheet & Materials (Form 5345-D)

\* = Mandatory Sections in All FBAR Cases

26

The **FBAR Electronic Teaching Case File** is a **Teaching Tool for FBAR Cases** that was created in the South Atlantic Area using A **Custom Designed FBAR Form 4318** that is thought to be **comprehensive in detail to complete** the most **Complex FBAR Cases**; however, **Not all sections are Mandatory** for some of the **Simple FBAR Cases**

# FBAR Sample Case File

The **FBAR Electronic Teaching Case File** that follows **Contains a Format** that is **organized to Explain** each **pertinent FBAR Form 4318 Sections** with **teaching examples, Official Exchange Rate Spreadsheet** in § 615, and **FBAR Penalty Computation Spreadsheets** in § 600 with **CPE Examples built into the Spreadsheet Tabs for all Willful and Non-Willful FBAR Cases**. A **FBAR Citizenship Lead Sheet** concludes if the TP is a US Person per Title 31. The **FBAR Electronic Teaching Case File** is divided into **4 Electronic Files with Electronic Part 3 of 4 has FBAR CPE examples** that **must be printed in Landscape Not Portrait** for **Workpaper Sections 600-4 through 600-10**.

**Intent of the Author**-The **FBAR Penalty Lead Sheet** in § 400 is thought to be **Completed first** by the RA to **gather all the details** in the FBAR Case File, **then a Summary Memorandum** is Completed with **and 886A-Case Summary** being **attached to Condense and Summarize ONLY the Essential Facts** for **FBAR Counsel** in Workpaper § 104.

The **Examples of FBAR CASE SUMMARY 886-A** (Both Willful and Non-Willful) are in **4 Sections** like a real Counsel Court Case:

<b>1-Discussion of FBAR Violations</b>	<b>3-Total Dollar Amounts of Penalties</b>
<b>2-Number of Penalty Assessments</b>	<b>4-Case Disposition</b>

**For all FBAR Cases---Revenue Agent's should Also Address the following 6 Items---**Somewhere in the Case File:

- 1) The **Balance of the Account** in USD on the **Date of Violation (Willful Only)** or **Highest Account Balance & Date (Non-Willful)**
- 2) An **Analysis of Unreported Foreign Income** and the **Amount of Tax Omitted Attributable to Foreign Accounts at Issue**
- 3) **Reasonable Cause**,
- 4) **Examiner Discretion** for Lesser Penalties when Used,
- 5) **Why No Willful FBAR Penalties** in Non-Willful FBAR Penalty Cases, and
- 6) The **Source of the Foreign Currency Amounts and Exchange Rates Used** to Arrive at USD.

26

The **FBAR Electronic Teaching Case File** that follows **Contains a Format** that is **organized to Explain** each **pertinent FBAR Form 4318 Sections** with **teaching examples of each Workpaper section, Official Exchange Rate Spreadsheet** in § 615, and **FBAR Penalty Computation Spreadsheets** in § 600 with **CPE Examples built into the Spreadsheet Tabs for all Willful and Non-Willful FBAR Cases**.

**Intent of the Author**-The **FBAR Penalty Lead Sheet** in § 400 is thought to be **Completed first** by the RA to **gather all the details** in the FBAR Case File, **then a Summary Memorandum** is Completed with **and 886A-Case Summary** being **attached to Condense and Summarize ONLY the Essential Facts** for **FBAR Counsel** in Workpaper § 104.

### **886A Case Summary (4 Parts)**

- 1) **Discussion of FBAR Violations (Critical Items Included)**
  - The **Balance of the Account** in USD on the **Date of Violation** (Willful Only) or **Highest Account Balance & Date** (Non-Willful)
  - An **Analysis of Unreported Foreign Income** & the **Amount of Tax Omitted Attributable to Foreign Accounts at Issue**
  - **Reasonable Cause**-Put in Argument 400 FBAR Section
  - **Examiner Discretion** for Lesser Penalties- When Used
    - Examiner's Manager (GM) Written Approval in Workpapers Per IRM 4.26.16.4.7 if a different Penalty Used than Mitigation Guidelines.
  - **Why No Willful FBAR Penalties** in Non-Willful FBAR Penalty Cases
  - The **Source of the Foreign Currency Amounts & Exchange Rates Used** to Arrive at USD
- 2) **Number of Penalty Assessments**
- 3) **Total Dollar Amounts of Penalties**
- 4) **Case Disposition**

27

**The Examples of FBAR CASE SUMMARY 886-A** (Both Willful and Non-Willful) are in **4 Sections** like a real Counsel Court Case:

**1-Discussion of FBAR Violations**

**2-Number of Penalty Assessments**

**3-Total Dollar Amounts of Penalties**

**4-Case Disposition**

**For all FBAR Cases---Revenue Agent's should Also Address the following 6 Items---In the 886A Case Summary and 400 Section:**

- 1)** The Balance of the Account in USD on the Date of Violation (Willful Only) or Highest Account Balance & Date (Non-Willful)
- 2)** An Analysis of Unreported Foreign Income and the Amount of Tax Omitted Attributable to Foreign Accounts at Issue
- 3)** Reasonable Cause,
- 4)** Examiner Discretion for Lesser Penalties when Used,
- 5)** Why No Willful FBAR Penalties in Non-Willful FBAR Penalty Cases, and
- 6)** The Source of the Foreign Currency Amounts and Exchange Rates Used to Arrive at USD.

# IRMs and Law

IRMs and Law - All Documents

Library Tools  
 Site Actions ▾ Browse Documents Library

SB/SE Area Resource Library ▸ FBAR Library ▸ IRMs and Law ▸ All Documents ▾

Home

	<input type="checkbox"/> Type	Name	Modified	<input type="checkbox"/> Modified By
		31 CFR chapter X	1/16/2013 12:40 PM	(b) (6)
		IRM 4.26.16	1/16/2013 10:28 AM	(b) (6)
		IRM 4.26.17	1/16/2013 10:28 AM	(b) (6)

28

[Add document](#)

IRM 4.26.16 (Rev. 07-01-2008), Report of Foreign Bank and Financial Accounts  
**(FBAR)-LAW**

IRM 4.26.17 (Rev. 05-05-2008), Report of Foreign Bank and Financial Accounts  
**(FBAR)-Procedures.**

# Job Aids

Job Aids - All Documents

Area Resource Library > FBAR Library > Job Aids > All Documents

Search this site...

Type	Name	Modified	Modified By
	2012 SBSE RA CPE FBAR Self Study Guide	1/16/2013 10:45 AM	(b) (6)
	Closing FBAR Case due to Statute when Other Years Remain Open	2/15/2013 3:37 PM	(b) (6)
	Documents to support willful violation of FBAR penalty	1/16/2013 10:24 AM	(b) (6)
	FBAR OVDI Treaty Workshops 2012 Final 2012-05 (JCM)	4/22/2013 1:00 PM	(b) (6)
	FBAR Penalty Mitigation Comps After 10222004 Willful and Non-Willful Revision 3142013	4/8/2013 9:09 AM	(b) (6)
	IDRS Citizenship Info	1/16/2013 10:24 AM	(b) (6)
	Official exch rates revised 1282013	1/28/2013 4:34 PM	(b) (6)
	Willful Blindness	4/8/2013 8:43 AM	(b) (6)

29

**Two Important FBAR Spreadsheets** should be noted and will be discussed next week in part 2 of 2 of this training on 6/6/2013 are:

- **FBAR Penalty Mitigation Comps After 10/22/2004 Willful and Non-Willful Revision 3142013**. (Found in FBAR Form 4318 Section 600)
- **Official Exchange Rates Revised 1/28/2013** (Found in FBAR Form 4318 Section 615)

**Custom Worksheet Tabs to Convert British Pounds (GBP), Swiss Francs (CHF), and (EUROS) into US Dollars for years 12/31/2002 through 12/31/2012.**

**Worksheet Tabs for various Countries to Convert Foreign Currency into US Dollars for 12/31/2003 through 12/31/2012.**

Note! Per IRM 4.26.16.3.6 the IRS must use the **Historical rates at 12/31** each year contained in these spreadsheets for **FBAR Penalties** from the **Financial Management Service (FMS)** at <http://fms.treas.gov/int.html>

### Closing FBAR Case with “No Action” due to Statute Issue when Other Years Remain Open

When opening an FBAR case, a separate FBAR case file is set up apart from the Title 26 case file. This FBAR case file will cover all FBAR years and will include other documents such as Related Statute Memorandums (RSM), FBAR Monitoring Documents (FMD), Activity Record, correspondence, POA forms, IDRs, FBAR Lead Sheet, CBRS research, copies of relevant records from the Title 26 case, and any other relevant documents and workpapers.

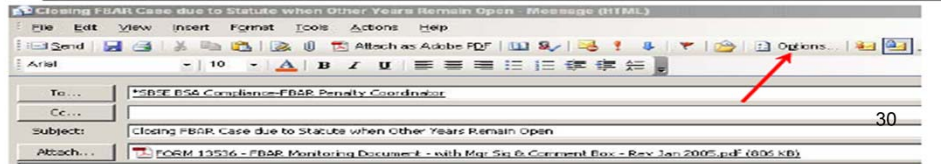
When closing an FBAR case, the entire FBAR case file is mailed with Form 3210 to DCC:  
Internal Revenue Service  
P.O. Box 33113  
Detroit, MI 48232-0113

**EXCEPTION:** If multiple FBAR years are open and established on the DCC Database, and  
(1) one of those years needs to be closed due to a statute issue, and  
(2) other years will remain open,

then the FBAR case file together with the remaining open years will remain with the examining agent and the year being closed due to a statute issue will be closed as follows:

- Complete FBAR Monitoring Document (FMD) Form 13536
- Include comment for DCC stating that FBAR case for a specific year is closing due to a statute issue and other years (specifically identifying the years) will remain open.
- Manager signs FMD
- Send FMD to DCC. Two options available:

Email (preferred method)	Fax
If digitally signed by manager (or signed by manager and scanned), FMD can be emailed to the following address: *SBSE BSA Compliance-FBAR Penalty Coordinator  You should “Request a read receipt for this message” when you send the email. With the email open, select the “Options” button then check the box “Request a read receipt for this message.”	Fax to 313-234-2278. Please note that this is a community fax machine.  DCC will not confirm receipt due to volume of documents received daily.



## Closing FBAR Case with “No Action” due to Statute Issue when Other Years Remain Open

There is a file on the FBAR Website in Job Aids that walks you through closing a case file like if you originally started the 2006 FBAR Year, then after consultation with your FBAR Coordinator it was decided not to pursue that 2006 FBAR Penalty due to a Statute Expiring, but we are still pursuing lets say the 2007 and 2008 FBAR Penalties Years that remain open, then we would follow those Job Aid procedures.

You should “**Request a read receipt for this message**” when you send the email. With the email open **select** the “**Options**” button then **check the box**

“Request a read receipt for this message.”

## **FBAR Reasonable Cause**

- Determination of **Reasonable Cause** is made **based upon the Facts and Circumstances in each situation**
- Did the TP act in Good Faith Considering experience, knowledge, and Education.
- Good Faith means no deception
- Good Faith Reliance on Tax Professional Means
  - Tax Professional was a Qualified Professional
  - Disclosed the Existence of the Foreign Account
  - Disclosed all Relevant Facts Regarding the Foreign Account
- Ignorance of FBAR Law Filing Instructions (Uninformed Belief) is not Reasonable Cause
- Mostafa v. Commissioner, T.C. Memo 2006-106

31

The Mostafa Case Points Out-

“Petitioner’s mistake as to ignorance of the law does not amount to reasonable cause that would relieve her from the addition to tax.”

Taxpayers are obligated to inform themselves of their various filing obligations, and that ignorance of the filing duty is not reasonable cause.

The mere uninformed belief that no return is due, no matter how genuine, is not reasonable cause.

“I didn’t know I had to file” is not acceptable as a defense under Reasonable Cause.



### **FBAR Reasonable Cause is Not**

- An uninformed belief that a return is not due
- Lack of knowledge
- Age
- Poor Health
- Complexity of the Law
- Originally being from another country
- Being told by the Foreign Entity/Person that there are no U.S. filing requirements
- Being told by a U.S. professional that put the taxpayer in the structure that there are no U.S. filing Requirements
- Fully cooperating with the audit process
- Incurring substantial accounting/attorney fees

32

The Secretary implemented the regulatory requirements with a 2 step reporting process.

- 1) Form 1040, Schedule B, Part III instructs TP to indicate an interest in a financial account in a foreign country by checking “Yes” or “No” in the appropriate box.
- 2) Form 1040 further refers taxpayers to Form TD F 90-22.1 (FBAR), which provides specific instructions for reporting a financial interest in or authority over bank accounts, securities accounts, or other financial accounts in a foreign country.

Failure to do this is no reasonable cause and leads into (b) (6) next talk on Willful Blindness.

## **FBAR Willful versus Non-Willful Penalty**

- The **primary difference** between **Willful and Non-Willful FBAR Penalties** is the **Degree of Fault by the Taxpayer**
- **Willful Penalty-Voluntary, Intentional violation of a Known Legal Duty**
  - An improper motive or bad purpose is not necessary to establish willfulness in civil context
  - **“Willful Blindness”** = Voluntary, intentional, reckless failure to discover a legal duty (willful ignorance, intentional avoidance of learning, blatant ignorance of the law, or conceal income)

Global-Tech Appliances, Inc.v. SEB S.A., 131 S.Ct.2068-69(2011)

  - Show the TP was in position to acquire the knowledge in reading FBAR or 1040 instructions on Schedule B.
- **Non-Willful Penalty**-an involuntary, unintentional violation of a legal duty

33

Because Title 31 § 5321 (a)(5) involves **Civil FBAR Penalties**, the applicable definition of willfulness is that which has been used in other civil contexts, including civil tax collection matters and compliance with reporting requirements.

Therefore, “willfulness” may be satisfied by establishing the individual’s reckless disregard of a statutory duty, as opposed to acts that are known to violate the statutory duty at issue.

The Supreme Court recently confirmed that acting with “willful blindness” to the obvious or known consequences of one’s action also satisfies a willfulness requirement in **both the Civil and Criminal Contexts.**

Where a taxpayer makes a “conscious effort to avoid learning about reporting requirements”, evidence of such willful blindness is a sufficient basis to establish willfulness.

Willfulness may also “be proven through the inference from conduct meant to conceal or mislead sources of income or other financial information.”

**FBAR Willful Penalty-**  
**Proof of Voluntary and Intentional**

- No Reasonable Cause
- Deliberate Choices
- A motive to hide the accounts tends to show violation was deliberate and not accidental
- Absence of motive does not negate willfulness if other evidence shows violation was not accidental or unintentional.
- Bad motive Is not required.

34

An improper motive or bad purpose is not necessary to establish willfulness in the civil context.

## **FBAR Willful Penalty-** **Proof of Known Legal Duty**

- **Direct Evidence**

- Statement by the person that he knew the filing requirements
- FBAR for a previous year, or incomplete FBAR for current year
- Prior FBAR compliance action

- **Circumstantial Evidence**

- Return Preparer asked about foreign accounts and person lied
- Failed to disclose the account or income for many years
- Person otherwise concealed the account

## **Factors Supporting Willful FBAR Penalty**

- Opened the foreign bank account
- Owner of, or a financial interest in, the foreign account
- Tax non-compliance
- Did not seek advice, or relied upon the advice of a promoter, foreign banker, or other unqualified tax professional.
- Violations persist after notification of FBAR reporting requirements
- Foreign account not disclosed to return preparer
- No business reason for the foreign account
- No family or business connection to the foreign country
- An offshore entity owns the account
- Previously-filed FBARs do not include all foreign accounts
- Illegal income in the foreign account
- Participated in an abusive tax avoidance scheme

## **Factors Not Supporting Willful FBAR Penalty**

- Inherited the foreign bank account
- Only signature authority over the foreign bank account
- Tax compliance
- Relied upon the advice of a tax return preparer, a CPA, an attorney, or another qualified tax professional.
- Full compliance after notification of FBAR reporting requirements
- Foreign account disclosed to return preparer
- Business reason for the foreign account
- Family or business connection to the foreign country
- Person owns the account in his name

## **FBAR Penalty Summary**

- 1) Discover a potential FBAR violation
- 2) Secure a Related Statute Memorandum (RSM)-N/A OVDI  
- OVDI Cases Already Have Blanket RSMs
- 3) Establish the **2** FBAR Administrative Controls
- 4) Investigate the FBAR Penalty Case  
-Use the FBAR 4318 for Penalty Case Structure
- 5) Determine the Appropriate FBAR Penalty
- 6) **Document Penalty Decision** in a **Memorandum** to **Area Counsel** & **Attach 886A-Case Summary**
- 7) **Issue** Form 13449 (FBAR **RAR**) **only after** case file **reviewed** by FBAR Coordinators **&** FBAR Penalty **approved** by FBAR Area Counsel.
- 8) Close the case

38

**The Ultimate Goal** -of the Revenue Agent in an FBAR Penalty Case File is to Complete Step 6)