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Brager Tax Law Group

August 2013

FAQ: What are the penalties for failing to file an FBAR?

Greetings!


There are both civil and criminal penalties for failure to file a [Foreign Bank Account Report 90-22.1 \(FBAR\)](#). The criminal tax penalties can result in a fine of not more than \$ 250,000, or five years in prison, or both. 31 U.S.C. 5322(a). For willful violations occurring prior to October 23, 2004, a civil penalty equal to the greater of the balance in the account at the time of the violation (not to exceed \$100,000) or \$25,000. The best way to avoid criminal tax penalties is to make a voluntary disclosure to the IRS which is commonly done through the [IRS' Offshore Voluntary Disclosure Program or OVDP](#) BEFORE the IRS finds out about you.

In addition to criminal penalties there are onerous civil penalties. There is a three tier system for these civil FBAR penalties. For willful violations occurring after October 22, 2004, the maximum civil penalty is the greater of \$100,000, or 50 percent of the balance of the account at the time of the violation. 31 USC 5321(a)(5). For example, if the account balance is \$6,000,000 the maximum penalty would be \$3,000,000. However, for each year the FBAR is not filed the penalty can be



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Upcoming Events

Dennis will be speaking at the following upcoming conferences.

2013 UCLA Tax Controversy Institute

"Tax Collection Techniques: Money Still Talks!"

IRS Collection Update
Beverly Hills Hotel, Beverly Hills, CA -- 10:30 am- 11:20 am
October 22, 2013

California CPA Society Annual Tax Update Policy Conference

"Tax Controversy Update"
TBA, November 2013

imposed again. Therefore it is quite possible for the maximum FBAR penalty to be several times the balance in offshore accounts.

For smaller accounts the penalty can be just as devastating. An offshore account with a balance of only \$15,000 could generate a penalty in the hundreds of thousands of dollars. The IRS has issued so-called "mitigation guidelines" under which smaller accounts may qualify for reduced penalties.

If the holder of an offshore account can successfully convince the IRS that the failure to file the FBAR was not willful then the penalties would be limited to \$10,000 per violation. However, the IRS takes the position that a separate violation occurs for each bank account that is not listed on the FBAR. So for example if an offshore bank account holder has 6 separate accounts the penalty would be \$60,000. As with the willful FBAR penalty this penalty, this penalty can be imposed for multiple years so that the total of these penalties can easily grow into the hundreds of thousands of dollars.

It is only if the holder of an offshore account can convince the IRS that the failure to file an FBAR is due to "reasonable cause" that the FBAR penalty will be waived. Generally speaking the IRS has been intransigent on this topic, and it is the rare case where the IRS will agree that there is reasonable cause for failure to file an FBAR. In appropriate cases the only way to relief may be through litigation.

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Do You Know a

Great Tax Litigation Attorney?

We are growing and searching for a great tax litigation attorney. Currently, we have five tax litigation attorneys in our Westwood office. Our

California State Bar Tax Section Annual Meeting

"State and Federal Responsible
Person Penalties"
San Jose
November 8, 2013

2013 American Bar Association 30th Annual Institute on Criminal Tax Fraud and 3rd National Institute on Tax Controversy

Las Vegas
December 11-13, 2013

Previous Events

KFWB Radio 980 AM

"Money 101 with Bob McCormick"
9:05 AM - 11 AM PT
Los Angeles
March 11, 2013 & March 29, 2013
& May 14, 2013

Previous Speeches

Los Angeles County Bar Association's 2013 Tax Night

"International Tax Enforcement
Update"
Los Angeles
February 12, 2013

2012 American Bar Association 29th Annual Institute on Criminal Tax Fraud and 2nd National Institute on Tax Controversy

"Tax Strategies, Administrative Tax
Strategies and Techniques in a
Recessionary Economy"
Las Vegas
December 6-7, 2012

Articles Quoting Dennis Brager

"Reminder from Dennis Brager
to All Foreign Bank Account
Holders: IRS FBAR Tax Form
Due June 30"

Wall Street Journal Online

tax controversy attorneys only represent clients with tax problems or tax disputes; whether those tax problems are with the IRS, the California Franchise Tax Board (FTB), the State Board of Equalization (SBE) or the Employment Development Department (EDD).

All of our tax lawyers formerly practiced as trial attorneys with the Internal Revenue Service's Office of Chief Counsel, and/or the Department of Justice. If you know someone with a minimum of five years of experience in tax litigation with an LLM, CPA or IRS, Department of Justice, U.S. Attorney's Office, or Tax Court Clerk experience, please pass along our contact information to the person. Thank you.

Dennis Brager

June 11, 2013

"Offshore Tax Evaders Taking Big Risk, Former IRS Attorney Says"

AdvisorOne

April 30, 2013

"Employees Besieged on All Sides for Misclassifying Workers"

Lawyers USA Online

April 5, 2013

"Bel Air Payroll Firm Sued for Allegedly Keeping Clients' Tax Payments"

The Baltimore Sun

March 1, 2013

"Indictment of Swiss Bank Employees Signals Ongoing Crackdown on Evasion, Lawyers Say"

The Bureau of National Affairs

January 4, 2013

**Articles Written by
Dennis Brager**

"If You Have a Bank Account in a Foreign Country, You May Need to File a Report with the IRS"

Bridge USA

June 2013

"Third-Party Federal Tax Liens and Levies and How to Fight Them"

Journal of Tax Practice &

Procedure

December 2012/January 2013

Recent Blog Posts

"IRS Slams Offshore Account Holder with 200 Percent FBAR Penalty for Willful Failure to File Foreign Bank Account Reports"

July 10, 2013

"87 Year Old Hawaiian Auto Mogul Acquitted of all Tax Fraud and Conspiracy Charges after District Court for District of Hawaii Finds Lack of Intent and Willfulness"

May 2, 2013

"Tax Preparers Beware! 6th Circuit Court of Appeals Affirms Dismissal of Tax Refund Suit Due to Inability to Prove Timely Filing of Amended Return"

April 11, 2013

"Prominent Tax Attorney Found Liable for Civil Tax Fraud Penalties Due to Finding of "Willful Blindness" to Underreporting of Income"

March 20, 2013

"Streamlined Foreign Bank Account Report (FBAR) Filing Compliance Procedure FAQs Issued by IRS for Non-Resident Taxpayers"

March 6, 2013

"San Diego Used Car Dealer Sentenced in Tax Fraud Case"

January 28, 2013

Our Services

- **Tax Litigation**
- **Tax Controversy**
- **Criminal Tax Defense**
- **IRS Payroll Tax Problems**
- **California Payroll Tax Problems**
- **Tax Fraud**
- **Tax Preparer Penalties**
- **Office of Professional Responsibility (OPR) Defense**
- **California Sales Tax Problems**
- **Tax Audits**
- **Tax Appeals**
- **Innocent Spouse Defenses**
- **Offers in Compromise**

- **Installment Payment Agreements**

The **Brager Tax Law Group** is a tax litigation and tax controversy law firm, which represents clients with tax problems and tax disputes with the IRS, the California Franchise Tax Board (FTB), the State Board of Equalization (SBE) and the Employment Development Department (EDD). **All of the firm's tax lawyers** are former trial attorneys with the IRS.



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