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# Brager Tax Law Group

July 2013

## IRS Slams Offshore Account Holder with 200 Percent FBAR Penalty

The IRS has assessed [FBAR penalties](#) against Carl R. Zwerner for willfully failing to file an [FBAR \(Foreign Bank Account Report\)](#) on Form TDF 90-22.1. The news here is that the IRS is seeking to impose a willful failure to file an FBAR penalty against Zwerner for multiple years. Specifically the IRS seeks to impose a separate 50% penalty for each of four years that Zwerner failed to file an FBAR. According to the [Complaint](#) the IRS assessed four separate penalties totaling over \$3 million as follows:

2004 - \$723,762, assessed on June 21, 2011  
2005 - \$745,209, assessed on August 10, 2011  
2006 - \$772,838, assessed on August 10, 2011  
2007 - \$845,527 assessed on August 10, 2011


Perhaps not surprisingly Zwerner didn't pay the FBAR penalties and the Department of Justice has filed suit to collect the penalties. These penalties, are civil penalties, and separate and apart from any criminal FBAR penalties that could be imposed, or [criminal tax fraud](#) charges that could be brought. As a practical matter though it would be unusual for the IRS to bring criminal tax or FBAR charges after a civil suit has been filed.

[Tax litigation attorneys](#) sometimes advised



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### Upcoming Events

**Dennis will be speaking at the following upcoming conferences.**

#### **2013 UCLA Tax Controversy Institute**

"Ask the Experts"  
IRS Collection Update  
Los Angeles  
October 22, 2013

#### **California State Bar Tax Section Annual Meeting**

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

clients who are considering quiet voluntary disclosures that in the past the IRS has only imposed one civil FBAR penalty even in criminal tax cases. Apparently, however, there is no guarantee for a client who decides not to enter the IRS' Offshore Voluntary Program (OVDP) that penalties could total 300%! This is because the statute of limitations on assessing the FBAR penalty is 6 years from the June 30th deadline for filing the FBAR. Whether or not the IRS can impose such a large penalty without running afoul of the prohibition under the 8th Amendment against "excessive fines" is unknown. Perhaps Zwerner's tax litigation lawyers will raise that as one of his defenses.

The question for those individuals with foreign bank accounts who have not yet entered the IRS' Offshore Voluntary Disclosure Program is whether the IRS has raised the stakes for all offshore account holders, or were there particularly bad facts in Zwerner's case which led the IRS to assess multiple FBAR penalties. The complaint, which was filed on June 11th gives Zwerner until August 12th to file an Answer. Perhaps once the Answer is filed we will know more. In any event, this case brings home the point that the decision not to enter the OVDP is not one to be taken lightly. All of the facts and circumstances need to be analyzed to determine what the likely action of the IRS will be if the foreign bank accounts are discovered by the IRS. As our tax lawyers tell anyone who will listen: "There are no cookie cutter answers," and there is no substitute for exercising careful and considered judgment based upon years of experience.

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### 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*  
 June 11, 2013

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

*AdvisorOne*  
 April 30, 2013

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

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**"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**
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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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