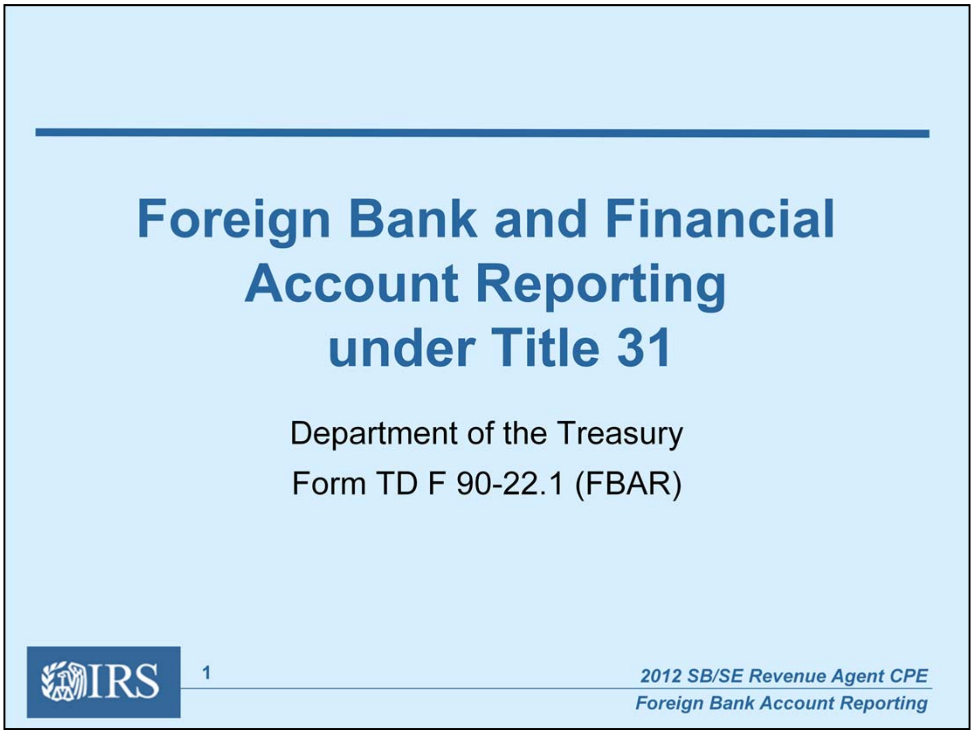
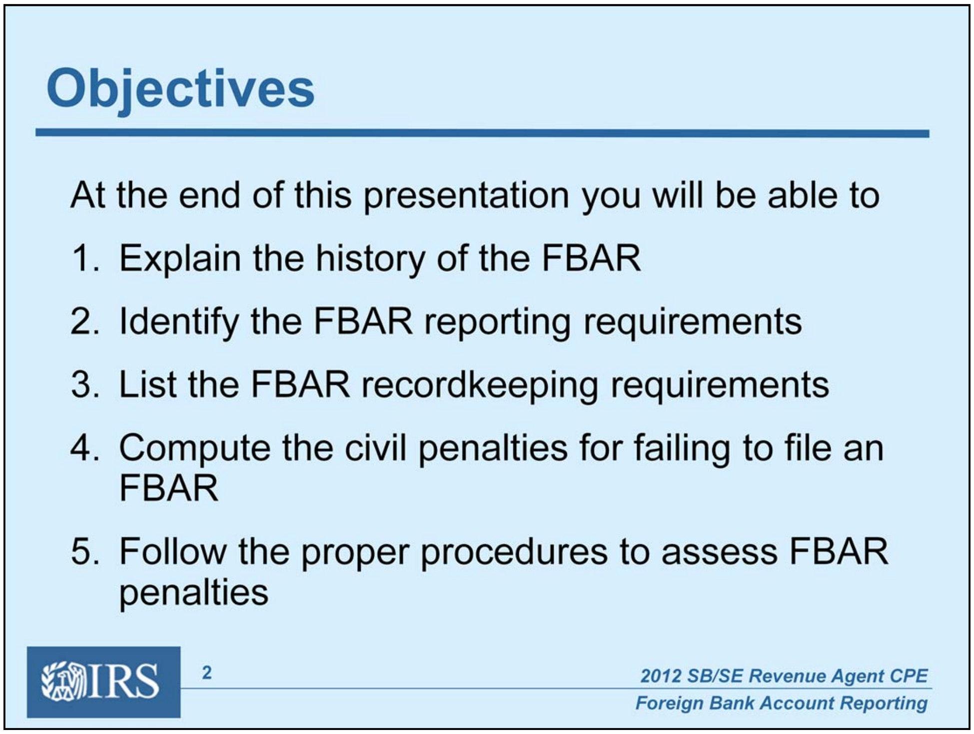
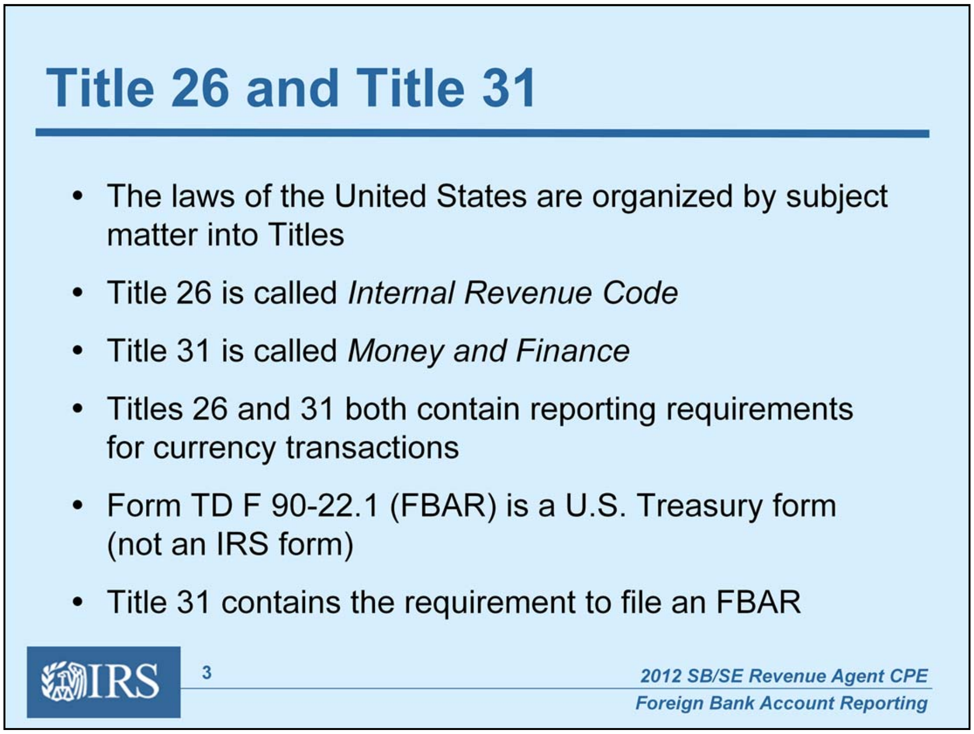


Welcome everyone. Today we are going to discuss foreign bank and financial account reporting under Title 31.



At the end of this presentation you will be able to

1. Explain the history of the FBAR
2. Identify the FBAR reporting requirements
3. List the FBAR recordkeeping requirements
4. Compute the civil penalties for failing to file an FBAR
5. Follow the proper procedures to assess FBAR penalties



To assist with locating a specific law, the laws of the United State are organized by subject matter into Titles. Title 26 contains the Internal Revenue Code, and Title 31 contains laws about money and finance. Both Titles 26 and 31 contain reporting requirements for currency transactions.

The requirement to file a report of foreign bank accounts is one of several requirements found in Title 31.

Title 26 also contains reporting requirements for currency transactions, such as IRS Form 8300 under Section 6050I, and foreign asset reporting on IRS Form 8938 under Section 6038D. The FBAR, which is Form TD F 90-22.1, is a U.S. Treasury form, not an IRS form.

This presentation discusses only the foreign account reporting under Title 31.

History of the FBAR

- Bank Secrecy Act (BSA) allows investigators to trace funds from illegal sources as they moved through the financial system
- Congress refined and modified the reporting requirements under the BSA, and expanded the reporting requirements after September 11, 2001

IRS 4 2012 SB/SE Revenue Agent CPE
Foreign Bank Account Reporting

Congress was concerned that criminals and their facilitators were using the financial system to disguise illegal sources of funds, specifically narcotic sales, so in 1970 Congress enacted the Bank Secrecy Act, also knows as the BSA, to assist government investigators with tracing illegal funds through the financial system. Over time, the government gained experience with the BSA reporting and Congress refined the reporting requirements. The events of September 11, 2001 re-focused the attention of Congress on illegal income, including the financing of terrorist activities, and Congress subsequently expanded the BSA reporting requirements.

History of the FBAR, continued

- Basic reporting required under the BSA:
  - Reports filed by persons on their own activities (for example, Form TD F 90-22.1, FBAR)
  - Reports filed by financial and non-financial businesses on their customers (for example, Currency Transaction Reports)
  - Registrations for money service businesses (for example, check cashing businesses)
  - Reports by the Secretary of the Treasury to Congress regarding FBAR compliance efforts

IRS 5 *2012 SB/SE Revenue Agent CPE*
Foreign Bank Account Reporting

The reports that interest us the most, because they are the topic of the presentation, are the disclosures by U.S. persons of relationships that they have with foreign banks or other foreign financial institutions. U.S. persons report such relationship by filing Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts, commonly referred to as F-B-A-R (FBAR). For the remainder of this presentation, FBAR will be used to refer to Form TD F 90-22.1 and the related reporting requirements.

There are other reporting requirements under the Bank Secrecy Act, including reports filed by financial and non-financial businesses to report certain transactions of their customers, such as Currency Transaction Reports, and also registration requirements for money service businesses such as check cashing businesses. Congress also requires the Secretary of the Treasury to make periodic reports to Congress regarding FBAR compliance activities. As a side note, many of the administrative procedures that relate to FBAR penalty cases exist to assist with preparing these reports for Congress.

History of the FBAR, continued

- The general authority for the Secretary of the Treasury to require U.S. persons to keep records and file reports of their transactions with foreign financial agencies is Title 31, §5314.
- 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 CFR 103.24)

IRS 6 2012 SB/SE Revenue Agent CPE
Foreign Bank Account Reporting

Title 31 does not specify the FBAR by name or form number. Section 5314 of Title 31 gives the Secretary of the Treasury the authority to require U.S. persons to file reports and keep records of their transactions or relationships with a foreign financial agency. The requirement to file an FBAR is found in 31 Code of Federal Regulations (CFR) section 1010.350 (formerly 31 CFR 103.24).

History of the FBAR, continued

- In 2003 the Financial Crimes Enforcement Network (FinCEN) delegated to the IRS FBAR enforcement authority
    - IRS may assess civil FBAR penalties
    - IRS may investigate possible FBAR violations
    - IRS may issue administrative rulings on FBARs
- 31 CFR 1010.810(g) (delegation from FinCEN to IRS)
- Delegation Order 25-13, April 12, 2012 (replaced 4-35 (Rev. 1), IRM 1.2.43.36) (delegation of FBAR enforcement within the IRS)

IRS 7 *2012 SB/SE Revenue Agent CPE*
Foreign Bank Account Reporting

In 2003 the Financial Crimes Enforcement Network, also known as FinCEN (F-I-N-C-E-N) delegated to the Commissioner of Internal Revenue enforcement authority for FBAR. The civil enforcement authority of the IRS includes assessing civil FBAR penalties, investigating possible FBAR violations, and issuing administrative rulings on FBARs. The FinCEN delegation of authority to the Commissioner of Internal Revenue is located in 31 Code of Federal Regulations (CFR) 1010.810(g). Delegation Order 25-13, issued April 12, 2012, which replaced Delegation Order 4-35 (Rev. 1), IRM 1.2.43.36, delegates the enforcement authority for FBARs within the IRS.

FBAR Records

- The Detroit Computing Center maintains the Currency and Banking Retrieval System database (CBRS)
- CBRS contains all FBAR filings, as well as other reports required under Title 31
- Revenue agents gain access to CBRS by completing an Online 5081
- IDRS IRP may also show FBARs filed by a taxpayer

IRS 8 2012 SB/SE Revenue Agent CPE
Foreign Bank Account Reporting

The Detroit Computing Center maintains a database of all FBAR filings as well as other Title 31 reports. The database is called the Currency and Banking Retrieval System, more commonly known by the acronym C-B-R-S.

All revenue agents can request access to the web version of CBRS by completing an Online 5081.

On the IRS computer systems, the Information Returns Processing database, or IRP, may also show whether a taxpayer filed an FBAR, although IRP does not show all of the information that is available on CBRS.

Who is required to file an FBAR?

A U.S. person that has a financial interest in, or signature or other authority over, foreign financial accounts, the aggregate value of which exceeded $10,000 at any time during the calendar year

IRS 9 2012 SB/SE Revenue Agent CPE
Foreign Bank Account Reporting

Any U.S. person that has a financial interest in, or signature authority over, foreign financial accounts, the aggregate value of which exceeded $10,000 at any time during the calendar year, must report those accounts by filing an FBAR.

Due Date for the FBAR

The due date of the FBAR is June 30 of the year immediately following the calendar year being reported

The normal due date of the FBAR is June 30 of the year immediately following the calendar year being reported.

2009 - 2011 IRS FBAR Guidance

- During the period 2009 to 2011 the IRS issued guidance that affected the due dates of FBARs for specified filers for certain calendar years
- The IRS guidance clarified some rules and definitions that affected the FBAR filing requirements of certain persons
- This guidance only affects FBARs required for calendar years prior to 2010

IRS 11

2012 SB/SE Revenue Agent CPE
Foreign Bank Account Reporting

2009 through 2011 was a very dynamic period for FBARs. Public awareness of the FBAR and the requirement for U.S. Persons to disclose foreign financial accounts increased as a result of the IRS voluntary disclosure initiatives. During this time FinCEN also reorganized the Bank Secrecy Act regulations and issued new FBAR regulations. All of this enforcement and regulatory activity caused some public confusion.

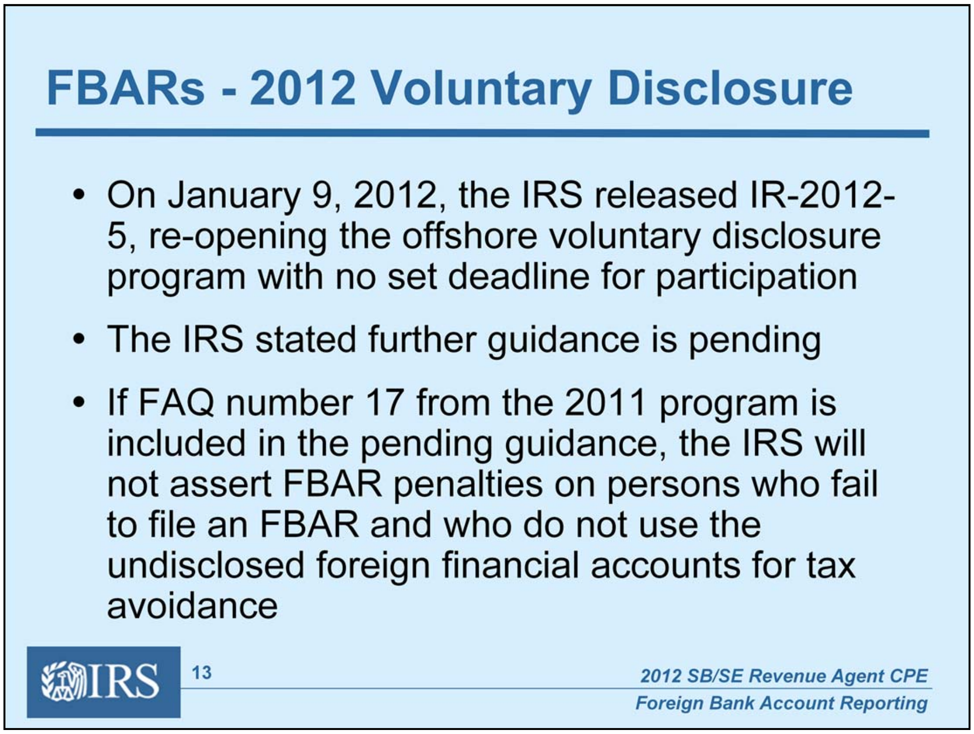
To assist the public, during the period 2009 to 2012, the IRS and FinCEN issued guidance to provide administrative relief to persons who may have had questions regarding their FBAR filing requirements. The administrative relief generally extended the due dates of FBARs for specific persons for certain calendar years. The IRS guidance also clarified some rules and definitions that affected the FBAR filing requirements of certain persons. Generally, the IRS guidance affected only certain persons required to file FBARs for calendar years prior to 2010.

FBARs - 2011 Voluntary Disclosure

- As part of the 2011 Voluntary Disclosure Program the IRS issued guidance that stated the IRS would not impose a penalty for failing to file an FBAR on a person:
  - that reported and paid tax on all taxable income for prior years,
  - that failed to file FBARs for calendar years 2009 and earlier, and
  - that files the delinquent FBARs by September 9, 2011
- See 2011 Voluntary Disclosure FAQ number 17, posted to irs.gov on February 8, 2011

The IRS provided special FBAR guidance as part of the 2011 Voluntary Disclosure Program. The IRS stated it would not impose a penalty for failing to file an FBAR on a person that reported and paid tax on all taxable income for prior years and only failed to file FBARs for calendar years 2009 and earlier. If such a person files the delinquent FBARs by September 9, 2011, the IRS will not impose a penalty for failing to file the FBARs.

See 2011 Voluntary Disclosure FAQ number 17, posted to irs.gov on February 8, 2011. The effect of this guidance was to provide penalty relief to persons who did not use the undisclosed foreign financial accounts for tax avoidance.



On January 9, 2012, the IRS released IR-2012-5, re-opening the offshore voluntary disclosure program with no set deadline for participation. The release stated that the IRS would issue additional guidance regarding the extension of the voluntary disclosure program.

If this future guidance from the IRS includes FAQ number 17 from the 2011 program in the 2012 program, the IRS may not assert FBAR penalties on persons who fail to file an FBAR and do not use the undisclosed foreign financial accounts for tax avoidance.

IRS Notice 2009-62

- On August 31, 2009 the IRS issued Notice 2009-62. This notice stated that the due date for FBARs for calendars year 2009 and earlier is June 30, 2010 for the following:
  - Persons who have signature authority over, but no financial interest in, a foreign account
  - Persons who have a financial interest in, or signature authority over, a foreign comingled fund

IRS 14 *2012 SB/SE Revenue Agent CPE*
Foreign Bank Account Reporting

On August 31, 2009 the IRS issued Notice 2009-62 to provide administrative relief to persons who have signature authority over, but no financial interest in, a foreign financial account, and to persons with a financial interest in, or signature authority over, a foreign comingled fund. For these two groups of persons, the due date for the FBAR to report foreign accounts maintained in calendar years 2009 and earlier calendar years is June 30, 2010.

This notice provided no extension for 2009 FBARs because the 2009 FBAR is due on June 30, 2010, a one-year extension for 2008 FBARs, and effectively eliminated penalties for calendar year 2007 and earlier FBARs for the persons described in the notice. As we will explain later, at this time Treasury was in the process of revising the FBAR regulations, and the instructions for the October 2008 revision of the FBAR changed the definition of U.S. Person. As a result of numerous questions and comments about these changes, the IRS extended the FBAR due dates for these persons.

IRS Notice 2010-23

- On March 15, 2010, the IRS issued Notice 2010-23 with the following guidance for FBARs due for calendar years 2009 and earlier:
  - Extended the FBAR due date to June 30, 2011 for persons with signature authority over, but no financial interest in, a foreign account
  - The term “comingled fund” means only mutual funds
  - For purposes of FBAR, a foreign hedge fund or private equity fund is not a mutual fund

15

2012 SB/SE Revenue Agent CPE
Foreign Bank Account Reporting

On March 15, 2010 the IRS issued Notice 2010-23 containing guidance for certain FBAR filers. For persons with signature authority over, but no financial interest in, a foreign financial account, Notice 2010-23 extended the FBAR due date to June 30, 2011 for FBARs for calendar years 2009 and earlier. This notice also stated that the term “comingled fund,” used in the FBAR instructions, means mutual funds only and does not mean a foreign hedge fund or a private equity fund.

This notice again extended the FBAR due dates for calendar years 2009 and earlier for persons with signature authority over, but no financial interest in, a foreign financial account. Notice 2010-23 did not further extend the due date for persons who are required to file FBARs for foreign mutual funds for calendar years 2009 and earlier. The due date for FBARs that report a financial interest in a foreign mutual fund remained June 30, 2010, as set-forth in IRS Notice 2009-62.

Please remember that it is not necessary for you remember all of the details of this guidance. It is important that you understand that certain person who may appear to have filed delinquent FBARs actually may have filed timely FBARs under the IRS guidance that we just covered.

New FBAR Regulations

- On October 26, 2010 the Financial Crimes Enforcement Network (FinCen) restructured the Bank Secrecy Act regulations without making substantive changes to regulations (see 75 FR 65806)
- The restructuring of the regulations renumbered the regulations:
  - Section 103.11 (Definitions) renumbered to section 1010.100
  - Section 103.24 (Reports of foreign financial accounts) renumbered to section 1010.350
  - Section 103.27 (Filing of reports) renumbered to section 1010.306
  - Section 103.32 (Recordkeeping requirements) renumber to section 1010.420

IRS 16 2012 SB/SE Revenue Agent CPE
Foreign Bank Account Reporting

On October 26, 2010 the Financial Crimes Enforcement Network (FinCen) restructured the Bank Secrecy Act regulations without making any substantive changes to regulations. See 75 FR 65806 for the restructured Bank Secrecy Act regulations.

The restructuring of the regulations renumbered the regulations. Not all of the regulations apply directly to FBARs. For purposes of FBAR reporting, it is important to take note of the following renumbered sections: 31 CFR section 103.11 (Definitions) was renumbered to section 1010.100; 31 CFR section 103.24 (Reports of foreign financial accounts) was renumbered to section 1010.350; 31 CFR section 103.27 (Filing of reports) was renumbered to section 1010.306; 31 CFR section 103.32 (recordkeeping requirements) was renumber to section 1010.420.

The important point about the regulations is, because of the restructuring of the Bank Secrecy Act regulations, you will be unable to locate nearly all of the old Section 103 regulations, references to which you may find on the prior-year FBAR forms. You should be not concerned by this because the renumbered regulations are identical to the old Section 103 regulations, so there is no need to search for the old regulation sections. On the next slide we will discuss the only exception to this statement.

New FBAR Regulations, continued

- On February 24, 2011, the Financial Crimes Enforcement Network (FinCEN) issued new FBAR regulations (see 76 FR 10234)
- The new regulations substantially expanded old regulation section 31 CFR 103.24 (Reports of foreign financial accounts) – see new section 1010.350
- The new regulations provide specific definitions related to the FBAR filing requirements

IRS 17 2012 SB/SE Revenue Agent CPE
Foreign Bank Account Reporting

On February 24, 2011, the Financial Crimes Enforcement Network (FinCEN) issued new FBAR regulations (see 76 FR 10234). The new regulations substantially changed and expanded old regulation section 31 CFR 103.24 (reports of foreign financial accounts). The new section number is 1010.350. Where old section 103.24 was a single paragraph, new section 1010.350 is now several pages because the new regulations provide very specific definitions and much more guidance related to the FBAR filing requirements.

New FBAR Regulations, continued

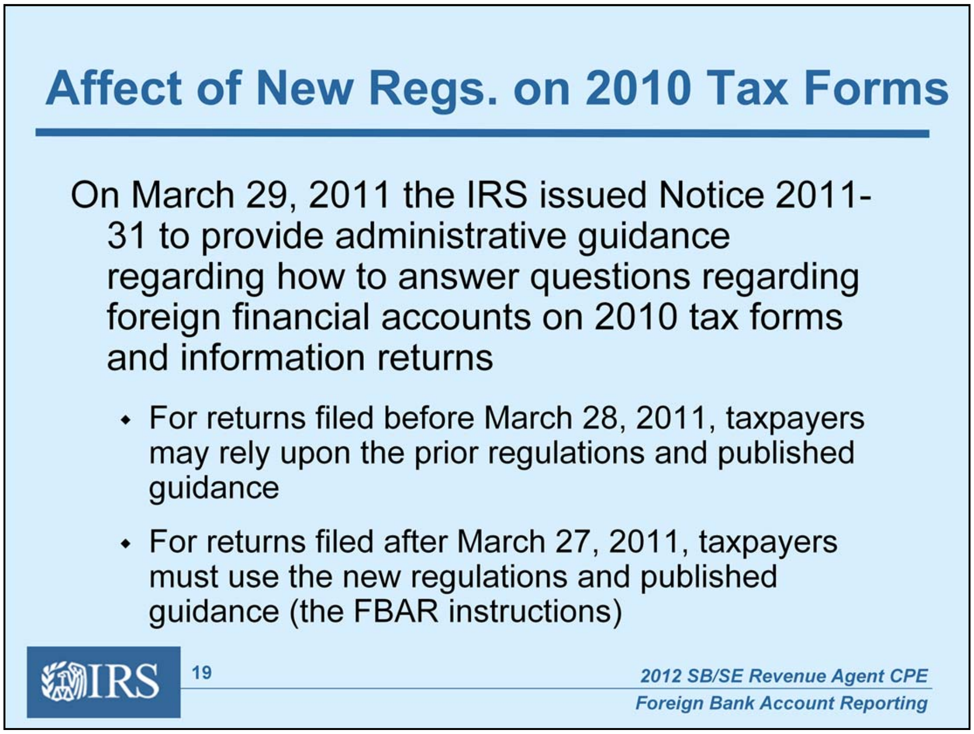
- The new regulations are effective for FBARs required to be filed by June 30, 2011 (2010 FBARs) and all subsequent-year reports
- Persons who deferred filing FBARs pursuant to IRS Notice 2010-23 may follow the new FBAR regulations to determine their FBAR filing requirements for calendar years prior to 2010

IRS 18

2012 SB/SE Revenue Agent CPE
Foreign Bank Account Reporting

The new FBAR regulations are effective for reports required to be filed by June 30, 2011 and all subsequent years. Generally, this means that the new FBAR regulations apply to FBARs filed for calendar year 2010 and later.

Recall from our previous discussion of IRS FBAR guidance that certain persons were allowed to defer filing FBARs as permitted in IRS Notice 2010-23. These persons may follow the new FBAR regulations to determine their FBAR filing requirements for calendar years prior to 2010. Some of these persons, due to the new definitions contained in the revised regulations, now have no FBAR filing requirements.



On March 29, 2011 the IRS issued Notice 2011-31 to provide administrative guidance to taxpayers regarding how to answer questions regarding foreign financial accounts that appear on 2010 income tax forms and information returns, for example the question on Form 1040, Sch. B regarding signature authority over, or interest in, a foreign financial account.

For income tax returns and information returns filed before March 28, 2011, taxpayers may rely upon the prior regulations and published guidance when answering the questions regarding foreign financial accounts.

For income tax returns and information returns filed after March 27, 2011, taxpayers must use the new regulations and published guidance, that is the March 2011 revision of the FBAR, to answer questions regarding foreign financial accounts.

This guidance should affect only a small number of taxpayers, and you may never encounter this as an issue. The important point to keep in mind is that on 2010 income tax returns, some taxpayers may have answered the questions about foreign financial accounts correctly based upon the prior guidance.

FBAR Form Revisions

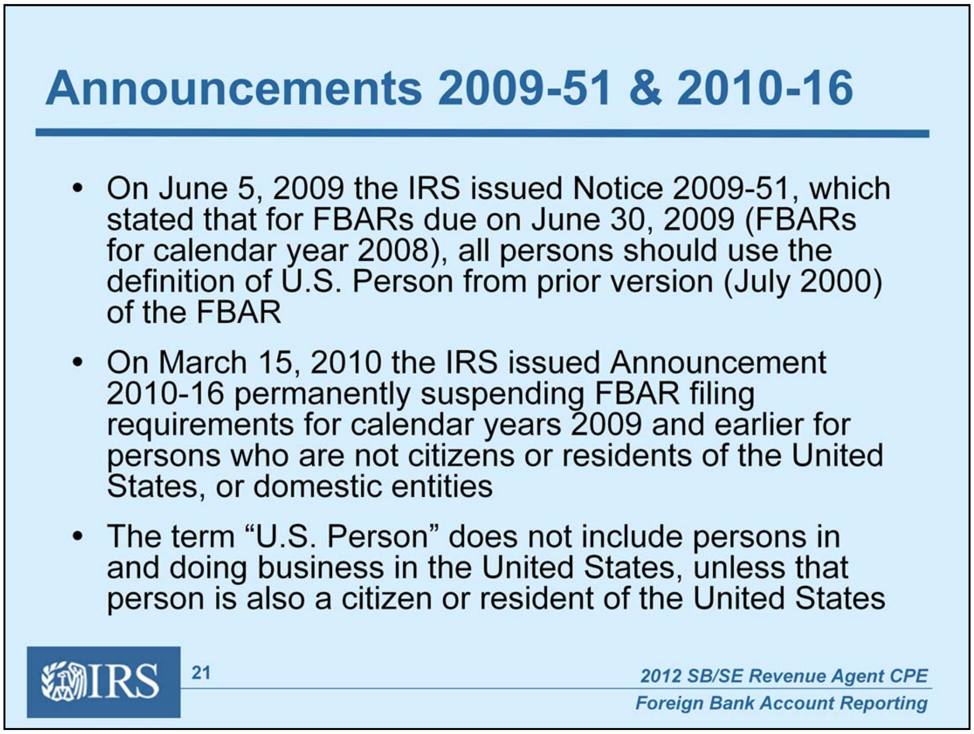
- Filers are to use the current version of the form at the time they file the report
- The March 2011 and later FBAR form revisions reflect the new Treasury regulations
- The current revision of the form is January 2012

IRS 20 2012 SB/SE Revenue Agent CPE
Foreign Bank Account Reporting

The general rule is that filers are to use the most current version of the FBAR form available at the time they file the report. As a result of the IRS guidance we just discussed, as well as the directions contained in the new FBAR regulations, some persons may file FBARs for a prior year using definitions that differ from the definitions in the instructions for the version of the FBAR they filed.

The March 2011 revision was the first version of the FBAR to reflect the new Treasury regulations.

The current version of the FBAR is the January 2012 revision.

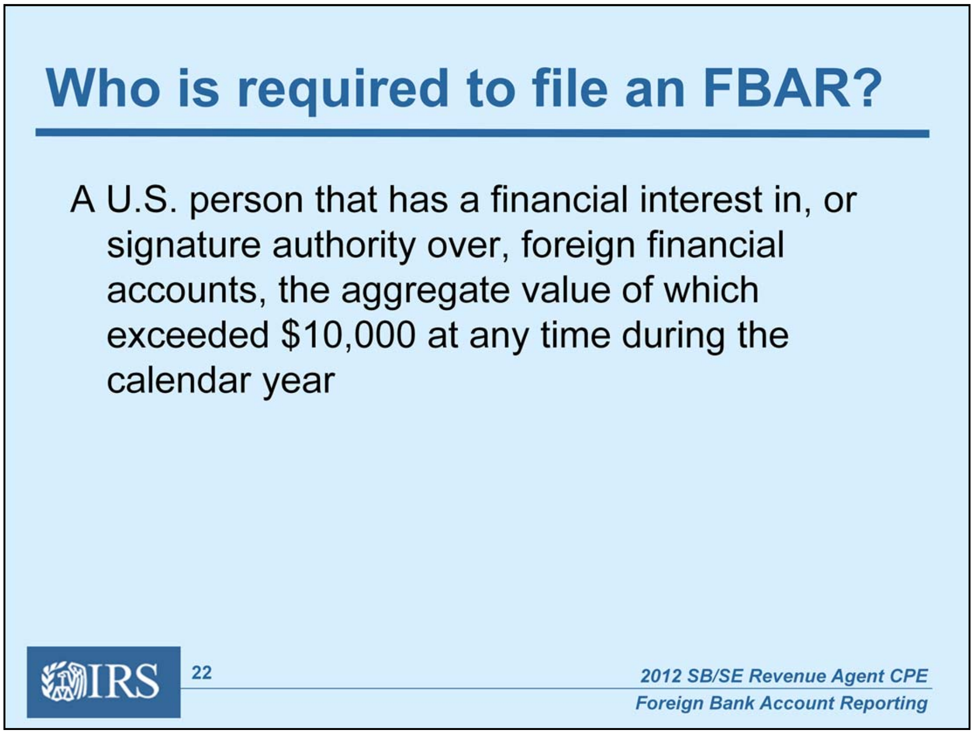


On June 5, 2009 the IRS issued Notice 2009-51, which stated that for FBARs due on June 30, 2009 (FBARs for calendar year 2008), all persons should use the definition of U.S. Person from prior version (July 2000) of the FBAR. On March 15, 2010 the IRS issued Announcement 2010-16 permanently suspending FBAR filing requirements for calendar years 2009 and earlier for persons who are not citizens or residents of the United States, or domestic entities

The IRS issued these notices because the instructions for the October 2008 revision of the FBAR changed the definition of United States Person to include a person in and doing business in the United States, and the IRS received a number of questions and comments regarding this new definition because it caused persons who previously never had an FBAR filing requirement to file an FBAR for calendar year 2008.

Under the new FBAR regulations, the term U.S. Person does not include a person in and doing business in the United States, unless that person is also a citizen or resident of the United States. As a result of Announcement 2010-16, despite the definition on the 2008 revision of the FBAR, no person doing business in the United States has to file an

FBAR unless that person is also a citizen or resident of the United States, or a domestic entity.



Now that we covered some various interim guidance issued by the IRS and FINCEN, let’s return to the FBAR filing requirements.

To refresh your memory, a U.S. person that has a financial interest in, or signature authority over, foreign financial accounts, the aggregate value of which exceeded $10,000 at any time during the calendar year must file an FBAR. The normal due date of the FBAR is June 30 of the year immediately following the calendar year being reported, although as we have just discussed some filers may have different due dates.

Key terms to define

- Person
- United States
- U.S. Person
- Financial interest
- Signature or other authority
- Foreign financial account
- Aggregate balance

23

2012 SB/SE Revenue Agent CPE
Foreign Bank Account Reporting

The definition of who is required to file an FBAR contains important terms that we will need to define. The important terms are: what or who is a person; what is the United States; what or who is a U.S. Person; what is a financial interest; what is signature or other authority; what is a foreign financial account; and what is the aggregate balance. We will now define each of these terms.

When evaluating whether a person has an FBAR filing requirement, take care to use the definitions that were in effect for the calendar year for which the person files the FBAR. Generally, persons who file FBARs for calendar years 2009 and earlier use the prior definitions of these terms, while persons who file FBARs for calendar years 2010 and later use the definitions in the new Treasury regulations. If there is any doubt regarding whether a particular set of definitions apply to a specific person or a specific calendar year, please consult Counsel.

Sources of Definitions

- The FBAR Treasury Regulations contain the definitions of the key FBAR terms
- Treasury Regulations 31 CFR 1010.100 contains general definitions
- For FBAR due for calendar years prior to 2010, see 31 CFR 103.24 and the instructions for the FBAR
- For FBARs due for calendar years 2010 and later, the new regulations at 31 CFR 1010.350 contains specific FBAR definitions

IRS 24 2012 SB/SE Revenue Agent CPE
Foreign Bank Account Reporting

The FBAR Treasury Regulations contain the definitions of the key FBAR terms. Treasury Regulation 31 CFR 1010.100 contains general definitions that are applicable to the Bank Secrecy Act.

For FBAR due for calendar years prior to 2010, see 31 CFR 103.24 and the instructions for the FBAR. Since 103.24 is only one paragraph long, the best place to seek FBAR-related definitions for calendar years prior to 2010 is the instructions to the FBAR.

For FBARs due for calendar years 2010 and later, the new regulations at 31 CFR 1010.350 contains specific FBAR definitions. These new definitions also appear in the FBAR instructions for the FBAR revisions dated March 2011 and January 2012.

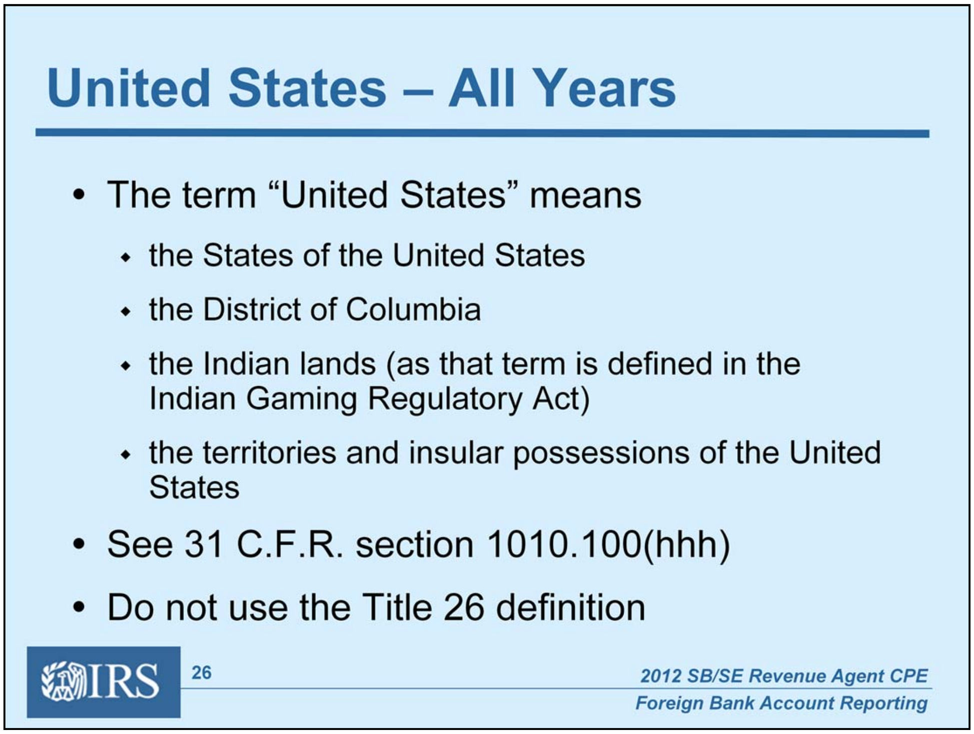
Person – All Years

- The term “Person” includes
  - an individual
  - a partnership
  - a corporation
  - a estate or trust
  - an unincorporated association
  - Any other entity recognized as a legal person
- See 31 C.F.R. section 1010.100(mm)

IRS 25 2012 SB/SE Revenue Agent CPE
Foreign Bank Account Reporting

The revised Treasury Regulations did not change the basic definition of a person, so this definition is valid for FBARs due for all calendar years.

The term person includes an individual, a partnership, a corporation, an estate or trust, an unincorporated association, and any other entity recognized as a legal person. See 31 C.F.R. section 1010.100(mm).



For Title 31 purposes, the term “United States” means the States of the United States, the District of Columbia, the Indian lands (as that term is defined in the Indian Gaming Regulatory Act), and the territories and insular possessions of the United States. This definition is valid for FBARs filed for all calendar years.

For Title 26 purposes (income tax), the United States is defined to be the states and the District of Columbia (and certain other geographic locations that are not important for our purposes). Be careful not to confuse the income tax definition of the United States with the Title 31 definition of the United States.

U.S. Person (2009 and prior)

- The prior regulations (31 CFR 103.24) stated that a person subject to the jurisdiction of the United States (except a foreign subsidiary of a U.S. person) must file an FBAR to report foreign financial accounts
- The FBAR instructions defined a U.S. Person as
  - a citizen of the United States
  - a resident of the United States
  - a domestic partnership
  - a domestic corporation
  - a domestic estate or trust

The prior regulations (31 CFR 103.24) stated that a person subject to the jurisdiction of the United States (except a foreign subsidiary of a U.S. person) must file an FBAR to report foreign financial accounts. The instructions for the July 2000 revision of the FBAR defined a U.S. Person as a citizen of the United States, a resident of the United States, a domestic partnership, a domestic corporation, and a domestic estate or trust. Recall that IRS Notice 2009-51 instructed potential FBAR filers to disregard the expanded definition of U.S. Person contained in the October 2008 FBAR instructions.

The prior regulations did not specifically define who was a resident of the United States for FBAR reporting purposes.

U.S. Person (2010 and later)

The new FBAR regulations (31 CFR 1010.350(b)) specifically defines a United States Person to be:

- a citizen of the United States
- a resident of the United States
  - apply the resident alien tests of IRC section 7701(b)
  - using the definition of United States in 31 CFR 1010.100(hhh)
- an entity created or formed under the laws of the United States, any state, the District of Columbia, the territories or insular possessions of the United States, or the Indian Tribes

IRS 28

2012 SB/SE Revenue Agent CPE
Foreign Bank Account Reporting

The new FBAR regulations (31 CFR 1010.350(b)) specifically defines a United States Person to be a citizen of the United States or an individual who is a resident alien. For FBAR purposes, to determine whether a person is a resident alien, use the tests described in Internal Revenue Code section 7701(b) and the related regulations (the lawful permanent resident test and the substantial presence test) , but use the Title 31 definition of the United States found in 31 CFR 1010.100(hhh).

This new definition of U.S. Person for FBAR purposes is not all that different than the prior definition of a U.S. Person. The most significant change is that the regulation clarifies that the Title 26 residency tests determine whether a resident is a U.S. person for FBAR reporting purposes.

U.S. Person - clarifications

Certain Internal Revenue Code elections do not affect the determination of whether a person is a U.S. Person for FBAR purposes (see Section III of 76 FR 10234, at page 10238):

- an election under a tax treaty to be treated as a non-resident for tax purposes
- elections under IRC sections 6013(g) and (h) (elections related to non-resident alien spouses of citizens or residents of the United States)
- election under IRC section 897(i) (a foreign corporation that owns a U.S. real property interests elects to be treated as a domestic corporation)

IRS 29 *2012 SB/SE Revenue Agent CPE*
Foreign Bank Account Reporting

Of course, using the a Title 26 residency test leads to questions regarding the effect of certain Title 26 elections on residency determinations. Fortunately the public raised these exact questions during the rule-making process and the Financial Crimes Enforcement Network (FinCEN) addressed these issues in the new regulations.

The notice of the final rules amending the Bank Secrecy Act regulations contains clarifications regarding the definition of U.S. Person. Although these clarifications are not part of the actual regulations, FinCEN stated that the following Internal Revenue Code elections do not affect the determination of whether a person is a U.S. Person for FBAR purposes: an election under a tax treaty to be treated as a non-resident for tax purposes, elections under IRC sections 6013(g) and (h) (elections related to non-resident alien spouses of citizens or residents of the United States), and an election under IRC section 897(i) (a foreign corporation that owns a U.S. real property interests elects to be treated as a domestic corporation).

See Section 3 of 76 FR 10234 at page 10238 for FinCEN’s comments regarding these elections.

Therefore, residency status for FBAR reporting purposes is determined using only the Title 26 the lawful permanent resident test and the substantial presence test.

U.S. Persons – Titles 26 and 31

- Do not use the Title 26 definition of a U.S. person (IRC section 7701(a)(30)) or a foreign estate or trust (IRC section 7701(a)(31))
- A person could be required to file an FBAR to report a foreign financial account and not be subject to U.S. taxes
- A person could be subject to U.S. taxes and not be required to file an FBAR to report a foreign financial account

With the linking of Title 26 residency tests to the Title 31 definition of U.S. Person, you must be careful not to use any other Title 26 definitions. For example, do not use the Title 26 definition of a U.S. person found in IRC section 7701(a)(30) or the Title 26 definition of a foreign estate or trust found in IRC section 7701(a)(31) to determine whether a person is a U.S. Person for FBAR purposes.

It is possible that a person is required to file an FBAR to report a foreign financial account and not be subject to U.S. taxes.

It is equally possible for a person to subject to U.S. taxes and not be required to file an FBAR to report a foreign financial account.

Now we will go over two examples to show that a person could have different FBAR and income tax filing requirements.

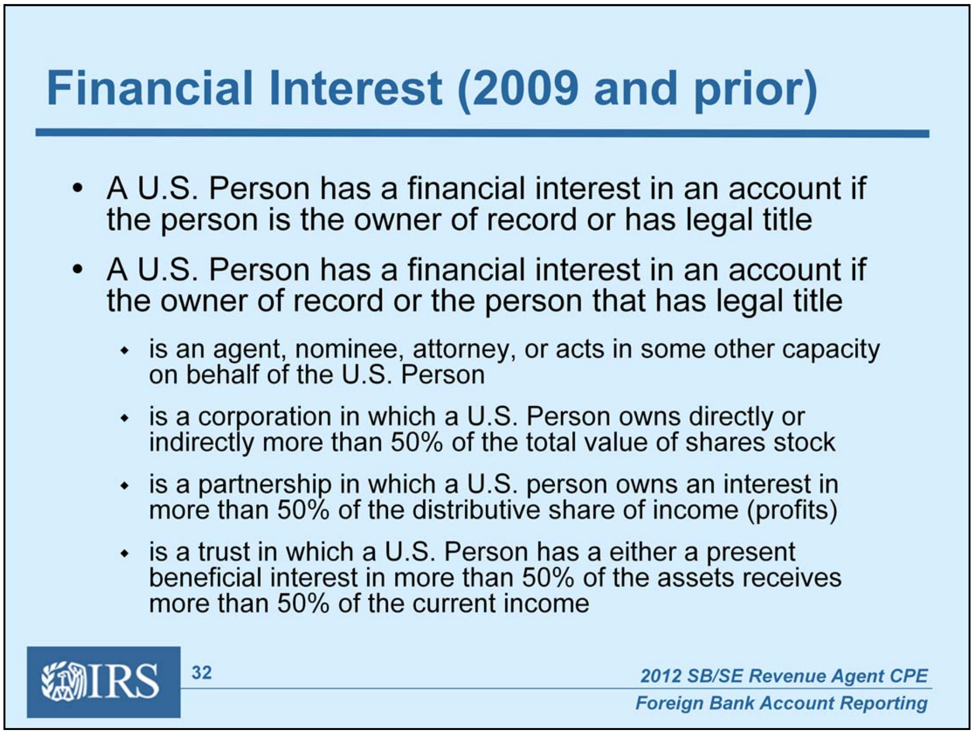
U.S. Person – Example

- Example 1: A resident of Puerto Rico who pays taxes only to Puerto Rico (and is not subject to U.S. income taxes) is required to file an FBAR to disclose foreign financial accounts
- Example 2: A corporation created under the laws of the United Kingdom is subject to U.S. income taxes on income effectively-connected with a U.S. trade or business, but the corporation is not required to file an FBAR to disclose foreign financial accounts

IRS 31 2012 SB/SE Revenue Agent CPE
Foreign Bank Account Reporting

Example 1: A resident of Puerto Rico who pays taxes only to Puerto Rico (and is not subject to United States income taxes) is required to file an FBAR to disclose foreign financial accounts. Title 26 applies to United States income taxes, and many residents of Puerto Rico only pay taxes to Puerto Rico and not to the United States. Under Title 31, Puerto Rico is considered to be part of the United States, so a resident of Puerto Rico has a requirement to file and FBAR to report foreign financial accounts.

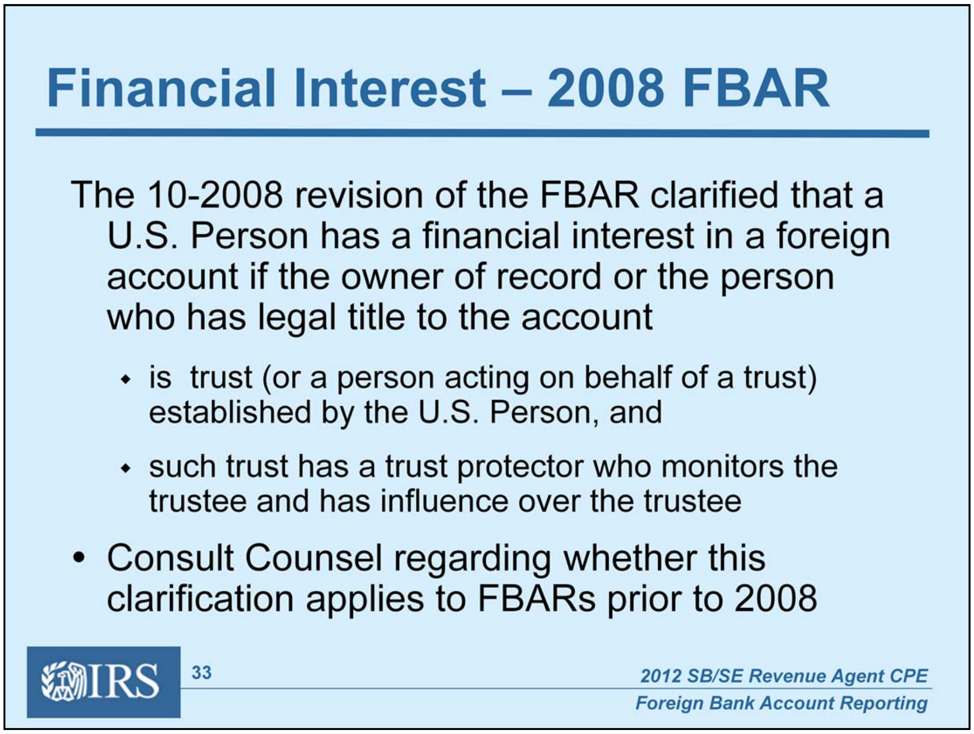
Example 2: A corporation created under the laws of the United Kingdom is subject to U.S. income taxes on income effectively-connected with a United States trade or business, but the corporation is not required to file an FBAR to disclose foreign financial accounts. In this example, the foreign corporation does not have a physical location inside the United States, so it does not have an FBAR filing requirement, even though the foreign corporation has to pay United Stated income taxes on income earned from sources within the United States.



A U.S. Person has a financial interest in an account if the person is the owner of record or has legal title to the account, even if the U.S. Person maintains the account for the benefit of another person, including a non-U.S. Person. More than one U.S. Person could have a financial interest in a single account.

A U.S. Person also has a financial interest in an account if the owner of record or the person that has legal title to the account is

- an agent, nominee, attorney, or acts in some other capacity on behalf of the U.S. Person,
- is a corporation in which a U.S. Person owns directly or indirectly more than 50% of the total value of shares stock,
- is a partnership in which a U.S. person owns an interest in more than 50% of the distributive share of income (profits), or
- is a trust in which a U.S. Person has a either a present beneficial interest in more than 50% of the assets receives more than 50% of the current income.



The instructions to the October 2008 revision of the FBAR clarified that a U.S. Person has a financial interest in a foreign account if the owner of record or the person who has legal title to the account is trust, or a person acting on behalf of a trust, established by the U.S. Person, and such trust has a trust protector. A trust protector is a person who is responsible for monitoring the activities of a trustee, and who has the authority to influence the decisions of the trustee, to replace the trustee, or to recommend the replacement of the trustee.

This clarification addresses U.S. Persons who control foreign trusts through third-parties to avoid FBAR reporting requirements. This clarification does not appear to add anything new to the definition of financial interest. A trust protector is normally the party through which a U.S. Person controls a trust, so the trust protector is an agent or nominee of the U.S. Person. Nonetheless, consult Counsel regarding whether the clarification of the definition of financial interest applies to FBARs for calendar years prior to 2008.

Financial Interest (2010 and later)

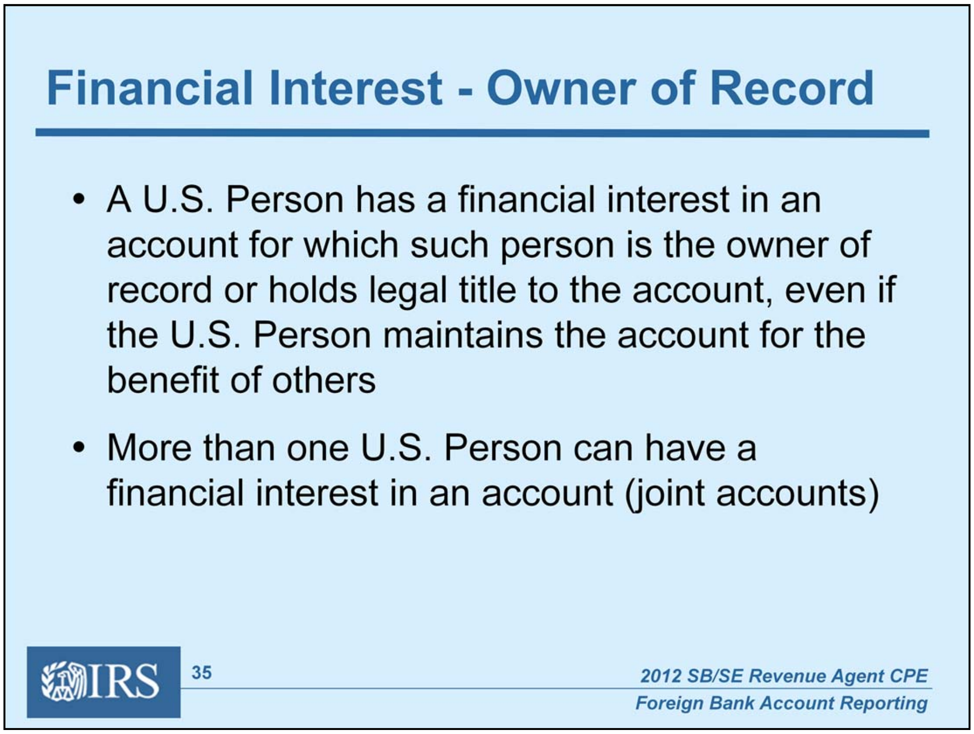
- The new FBAR regulations at 31 CFR 1010.350(e) defines financial interest in an account to be where
  - a U.S. Person is the owner of record or holder of legal title to the account - 1010.350(e)(1)
  - a U.S. Person has an other financial interest in the account - 1010.350(e)(2))
  - a U.S. Person causes an entity to be created for the purpose of evading this section - 1010.350(e)(3)

IRS 34

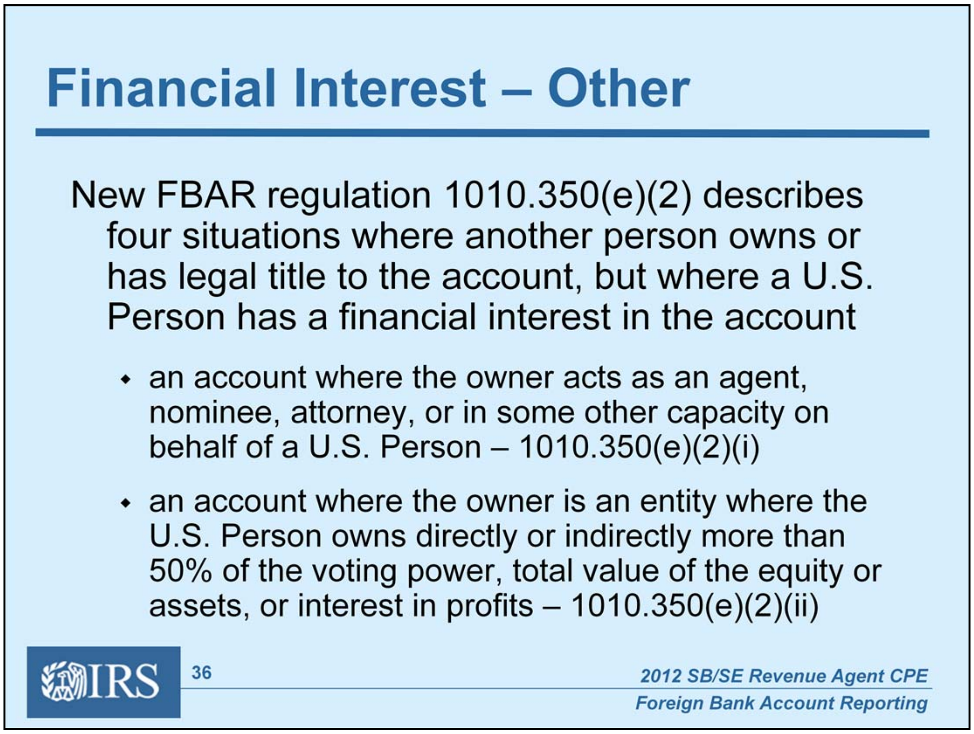
2012 SB/SE Revenue Agent CPE
Foreign Bank Account Reporting

The new FBAR regulations (31 CFR 1010.350(e)) define financial interest in an account to be where a U.S. person is the owner of record or holder of legal title to the account (regulation section 1010.350(e)(1)), where the U.S. person has an other financial interest in the account (regulation section 1010.350(e)(2)), or where a U.S. Person causes an entity to be created for the purpose of evading this section (1010.350(e)(3)).

We will discuss each of these three types of financial interests.



A U.S. Person has a financial interest in an account for which such U.S. Person is the owner of record or holds legal title to the account, even it the U.S. Person maintains the account for the benefit of others. More than one U.S. Person can have a financial interest in an account (for example, joint accounts).



New FBAR regulation section 1010.350(e)(2) describes several scenarios where another person owns or has legal title to the account, but where a U.S. Person has a financial interest in the account.

The first situation is where the owner of the account acts as an agent, nominee, attorney, or in some other capacity on behalf of a U.S. Person (regulation section 1010.350(e)(2)(i)).

The second situation is where the owner of the account is an entity where the U.S. Person owns directly or indirectly more than 50% of the voting power, more than 50% of the total value of the equity or assets, or more than 50% of the interest in profits (regulation section 1010.350(e)(2)(ii)).

Both of these situations or scenarios describe common practices in offshore arrangements designed to conceal assets. In each scenario the U.S. Person effectively controls the account through a third party or a controlled foreign entity, but the U.S. Person is not the owner of record of the foreign account. Under the new FBAR regulations, such persons have a financial interest in the foreign account.

Financial Interest – Other, continued

The new regulations describe two situations where a U.S. Person has a financial interest in an account where a trust owns or is the holder legal title to the account:

- where the U.S. Person is the grantor of the trust and the U.S. person has an ownership interest in the trust under Title 26 – 1010.350(e)(2)(iii)
- where the U.S. Person has a present beneficial interest in more than 50% assets, or from which the U.S. Person receives more than 50% of the current income – 1010.350(e)(2)(iv)

Important Note: a beneficiary described in the second bullet is not required to report the account if the trust, the trustee, or an agent of the trust is a U.S. Person that files an FBAR to report the account. See 1010.350(g)(5).

The new regulations also describe two situations where a U.S. Person has a financial interest in an account where the trust owns or the trust is the holder legal title to the foreign account. You many not fully understand these two requirements if you are not familiar with foreign trusts. The important point to remember is that under certain conditions a U.S. Person has a financial interest in a foreign bank account owned by a foreign trust.

One scenario described in the regulations is where a U.S. Person is the grantor of the trust and that U.S. person has an ownership interest in the trust under Title 26 (see regulation section 1010.350(e)(2)(iii)). In this scenario the U.S. Person has an ownership interest in the trust accounts. Note that for a U.S. person to have an ownership interest in a trust account the person must be the grantor of the trust. As a result, a beneficiary of the trust that did not create the trust does not have a financial interest in the trust under this particular regulation, although such a person may have a financial interest in the account under another regulation.

The other scenario described in the regulations is where the U.S. Person has a present beneficial interest in more than 50% assets of the trust, or the U.S. Person receives more than 50% of the current income of the trust (see regulation section 1010.350(e)(2)(iv)). If the U.S. person meets either of these two tests then that person has a financial interest in the trust account.

Important Note: a beneficiary described in the second bullet is not required to report the account if the trust, the trustee, or an agent of the trust is a U.S. Person that files an FBAR to report the account. See regulation section 1010.350(g)(5). It is important to note that this exception applies only if the person that files the FBAR is a U.S. Person.

Financial Interest – Other, continued

FinCEN clarifications contained in the notice of final regulations (76 FR 10234, page 10240):

- a discretionary beneficiary of trust does not have a financial interest in a trust account
- a remainder interest in a trust is not a present beneficial interest in a trust
- trust arrangements, including the use a trust protector, that obscure or conceal ownership, are subject to the anti-avoidance provision of the regulations

IRS 38 2012 SB/SE Revenue Agent CPE
Foreign Bank Account Reporting

In the notice of final regulations (76 FR 10234, page 10240), the Financial Crimes Enforcement Network (FinCEN) clarified that a discretionary beneficiary of a trust does not have a financial interest in a trust account. Also, a remainder interest in a trust is not a present beneficial interest in a trust. A remainder beneficiary is a beneficiary that receives the assets of the trust upon the termination of the trust.

If the status of the beneficiary changes during the calendar year, then that beneficiary would have to report the account. For example, where the death of a current beneficiary elevates a conditional or remainder beneficiary to a current beneficiary.

FinCEN also stated that trust arrangements, including those arrangements that use a trust protector subject to the direction or control of a beneficiary or grantor, are subject to the anti-avoidance provision of the of the regulations if such arrangements are designed to obscure or conceal the ownership by a U.S. Person of the beneficiary.

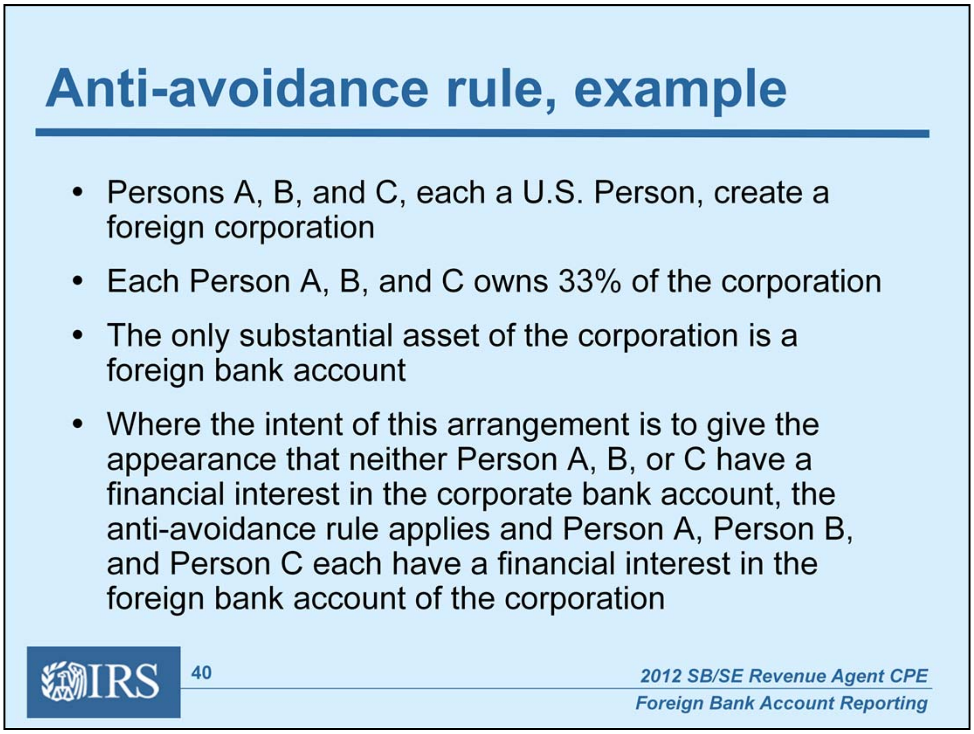
Anti-avoidance Rule

A U.S. Person that causes an entity to be created for the purpose of evading the definition of financial interest has a financial interest in any account for which the entity is the owner of record or holder of legal title – 1010.350(e)(3)

IRS 39 2012 SB/SE Revenue Agent CPE Foreign Bank Account Reporting

A U.S. Person that causes an entity to be created for the purpose of evading the definition of financial interest has a financial interest in any account for which the entity is the owner of record or holder of legal title (regulation section 1010.350(e)(3)).

In the notice of final rule making (76 FR 10234, page 10240) the Financial Crimes Enforcement Network (FinCEN) clarified that the term evading is not intended to apply to persons who make a good-faith effort to comply with the regulations.



This anti-avoidance rule will be an important tool to address future abusive arrangements designed primarily to circumvent the FBAR reporting requirements.

An example of the type of arrangement that this rule is designed to address is where Persons A, B, and C are all U.S. Persons and create a foreign corporation. Each Person A, B, and C owns 33 percent of the stock of the foreign corporation. The only substantial asset of the corporation is a foreign bank account.

On the surface such an arrangement appears to result in none of the U.S. Persons A, B, or C having a financial interest in the foreign corporate account because each has less than a 50% interest in the corporation; however, where the intent of the arrangement is for each person to be a co-owner of the foreign financial account, and the persons created the foreign corporation only to avoid reporting a financial interest in a foreign bank account, the anti-avoidance rule applies and each U.S. Person is considered to have a financial interest in a foreign bank account.

Signature Authority

07-2000 FBAR	10-2008 FBAR	03-2011 FBAR
Control the disposition of assets	Control the disposition of assets	Control the disposition of assets
By delivering document with his signature to the bank	By delivering document with his signature to the bank	Direct communication with bank

Note: an individual can have control of the disposition of assets either alone or in conjunction with others

Recall that an FBAR reporting requirement exists where a U.S. Person has a financial interest in, or signature authority over, a foreign financial account. We just discussed the definition of financial interest. Now we will discuss the definition of signature authority. As with some of the other definitions, the definition of signature authority has changed slightly.

The table shown on this slide is a summary of the definitions of signature authority from three previous revisions of the FBAR form. Recall that the March 2011 and January 2012 revisions of the form both use the definitions from the new FBAR regulations, so the definitions on these forms are the same.

The July 2000, the October 2008, and the March 2011 and later FBAR revisions have slightly different definitions of signature authority. Under all three FBAR revisions, to have signature authority an individual must have the ability to control the disposition of assets from the foreign account, regardless of whether the individual can exercise such power alone or in conjunction with one or more individuals.

The July 2000 and the October 2008 FBAR revisions stated that the individual also must have the authority to dispose of assets from the account by delivering a document containing his signature (or his signature and the signature of others) to the bank, while the March 2011 and later FBAR revisions stated that the individual must have the authority to dispose of assets from the account by directly communicating with the bank; notice that the March 2011 definition does not specify the manner in which the person has to communicate with the bank. The current definition of signature authority is a much cleaner, and clearer, definition of signature authority.

Other Authority

07-2000 FBAR	10-2008 FBAR
Control the disposition of assets	Control the disposition of assets
Direct communication with bank	Direct or indirect communication with bank on behalf of a U.S. Person
Orally or some other means	Orally or some other means

Note: an individual can have control of the disposition of assets either alone or in conjunction with others

Because the July 2000 and the October 2008 FBAR revisions used a literal definition of the term signature authority, specifically that the individual must sign and deliver the document to the bank, these FBAR revisions separately defined a second term, other authority, to address situations where the individual controlled the disposition of assets from an account but the individual neither had to sign an actual document nor deliver a document to the foreign bank.

Under the July 2000 FBAR revision, to have other authority over an account, an individual must control the disposition of assets by direct communication with the foreign bank, orally or by some other means.

Under the October 2008 FBAR revision, to have other authority over an account, an individual must control the disposition of assets through either direct or indirect communication with the foreign bank orally, or by some other means. Note that the October 2008 FBAR revision added indirect communication with a bank.

Signature and Other Authority

07-2000 FBAR	10-2008 FBAR	03-2011 FBAR
Control the disposition of assets	Control the disposition of assets	Control the disposition of assets
Direct communication with bank by any means	Direct or indirect communication with bank by any means	Direct communication with bank

Note: an individual can have control of the disposition of assets either alone or in conjunction with others

When we combine the separate definitions of signature authority and other authority from the July 2000, the October 2008 revisions, and compare the result to the March 2011 FBAR revision, we see that all of the definitions are functionally identical because they all define signature or other authority to be the power to control the disposition of assets from an account by direct communication with the foreign bank.

Only the October 2008 FBAR revision includes in the definition of other authority indirect communication with the bank through an agent. Recall that we previously discussed guidance issued by the IRS under the Voluntary Disclosure Programs where the IRS stated it would not impose FBAR penalties on persons who file delinquent FBARs to report only signature authority over, but no financial interest in, a foreign account. Therefore, in nearly all cases the addition of indirect communication with a bank to the definition of signature or other authority should have no real significance for individuals who have no financial interest in the foreign bank account.

Another important point to keep in mind is that you do not have to consider signature or other authority with respect to a U.S. Person who is the owner of the foreign account. A U.S. Person that has a financial interest in such a foreign bank account always could have an FBAR filing requirement.

Signature or Other Authority

- Under the new regulations the test for signature or authority over an account is whether the bank will act upon a direct communication from an individual regarding the disposition of assets
- The new definition also uses the phrase “in conjunction with another” to address situations where the bank requires a direct communication by more than one person

IRS 44 2012 SB/SE Revenue Agent CPE
Foreign Bank Account Reporting

The new FBAR regulations state that the test for signature or authority over an account is whether the bank will act upon a direct communication from an individual regarding the disposition of funds. The Financial Crimes Enforcement Network clarified that under this revise definition, an individual who only participates in the decision to allocate assets within the account does not have signature or other authority. Also, an individual does not have signature or other authority if such individual only has the power to supervise or instruct a person who has signature authority over the reportable account.

The full definition of signature or other authority contained in the new FBAR regulations includes the phrase “in conjunction with another.” The addition of this phrase to the definition is only to address situations where the bank requires a direct communication by more than one person.

See Section II.B of the notice of final rulemaking (76 FR 10234, page 10235).

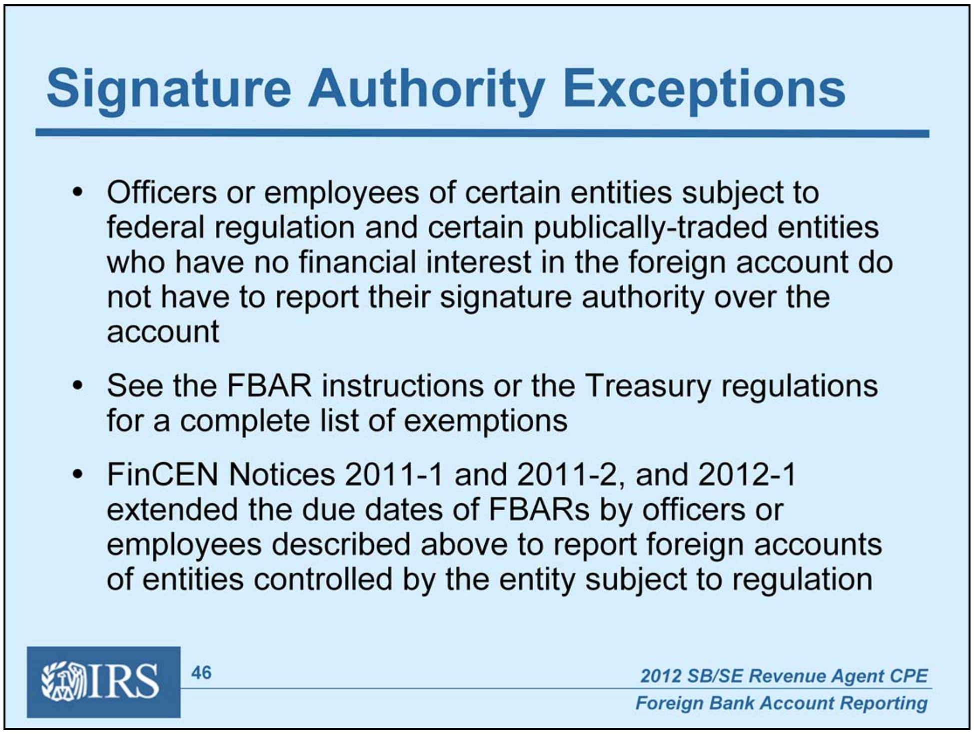
Signature or Other Authority Example

Where a group or team of individuals participates in the decision regarding how to allocate assets in a reportable account, and another individual must approve the investment recommendation of the group, the only individual who has signature or other authority over the reportable account is the individual who has the power to direct the foreign bank to execute the investment decision reached by the group.

IRS 45 2012 SB/SE Revenue Agent CPE
Foreign Bank Account Reporting

Here is an example to clarify the new definition of signature or other authority.

Where a group or team of individuals participates in the decision regarding how to allocate assets in a reportable account, and another individual must approve the investment recommendation of the group, the only individual who has signature or other authority over the reportable account is the individual who has the power to direct the foreign bank to execute the investment decision reached by the group.

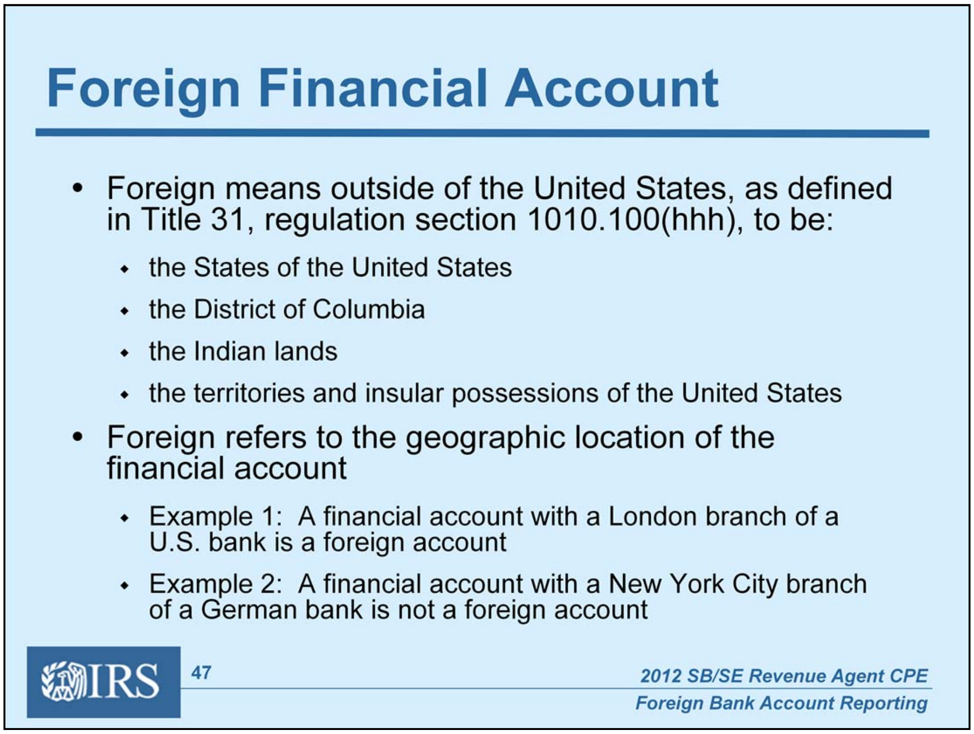


Certain individuals do not have to report signature authority over specific types of foreign accounts. The FBAR instructions and the new Treasury regulations have a complete list of these exemptions.

In general, officers or employees of certain entities subject to federal regulation, and officers or employees of certain publically-traded entities, do not have to report foreign financial accounts owned by such entities if these officers or employees have no financial interest in the foreign account. These exemptions apply only with respect to accounts that belong to the entity that is subject to federal regulation.

The exemption does not apply with respect to accounts that belong to entities owned or controlled by the regulated entity. Officers and employees of regulated entities must file FBARs to report signature or other authority over foreign accounts owned by an entity owned or controlled by a regulated entity. FinCEN Notices 2011-1, 2011-2, and 2012-1 extended the due dates to June 30, 2013 for calendar year 2011 FBARs that report accounts that belong to entities owned or controlled by the regulated entity.

Unless you are examining a company subject to federal regulation, you will not encounter this issue.



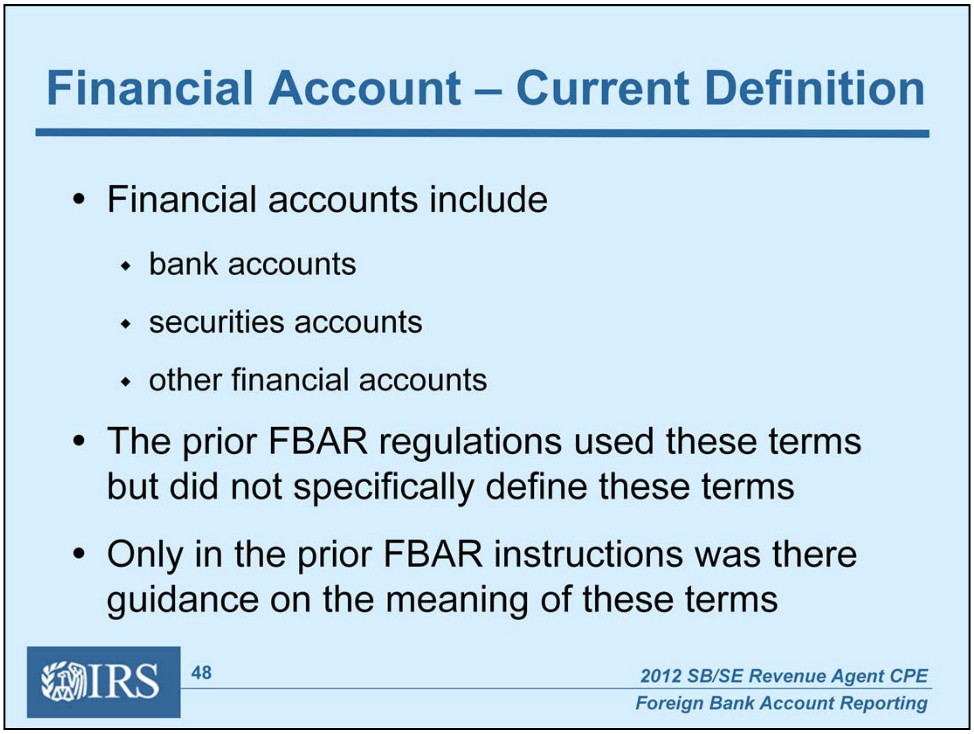
We covered several important key terms contained in the FBAR filing requirement. We covered United States Person, financial interest, and signature or other authority. The only key terms that we have not defined are what is a foreign financial account and how to compute the aggregate balance. We are now going to cover the definition of a foreign financial account.

First, foreign means outside of the United States using the Title 31 definition of United States found in regulation section 1010.100(hhh). Under Title 31, the United States includes the states, the District of Columbia, the Indian lands, and the territories and insular possessions of the United States. Remember do not, use the Title 26 income tax definition of the United States.

Second, foreign refers to the geographic location of the financial account.

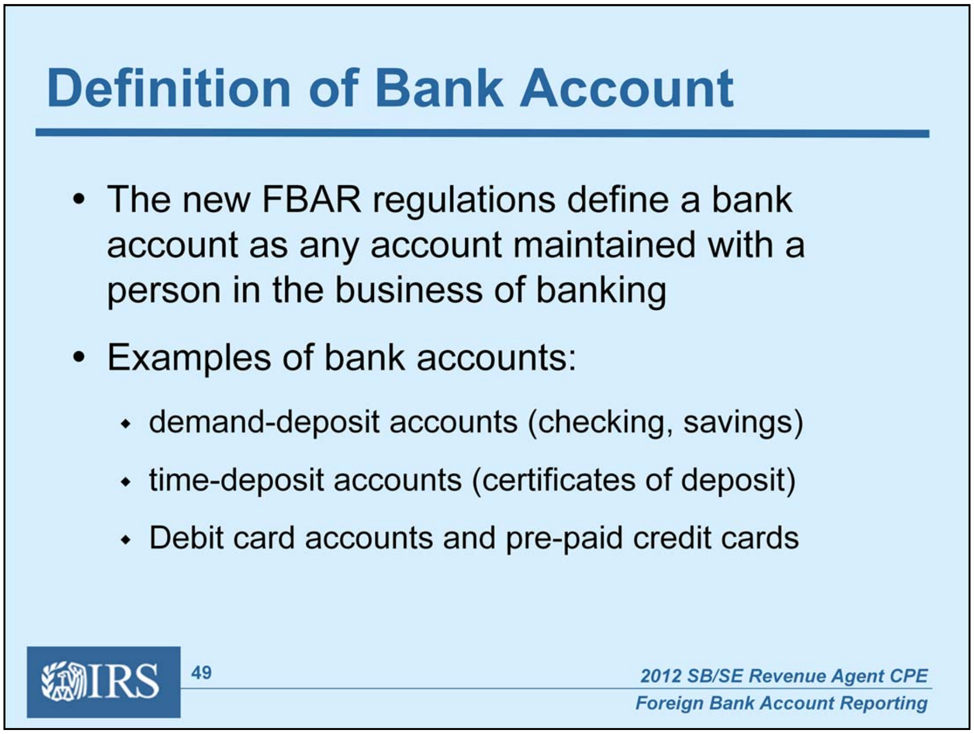
For example, a financial account with a London branch of a U.S. bank is a foreign account because the geographic location of the account is outside the United States.

Another example, a financial account with a New York City branch of a German bank is not a foreign account because the geographic location of the account is inside the United States.



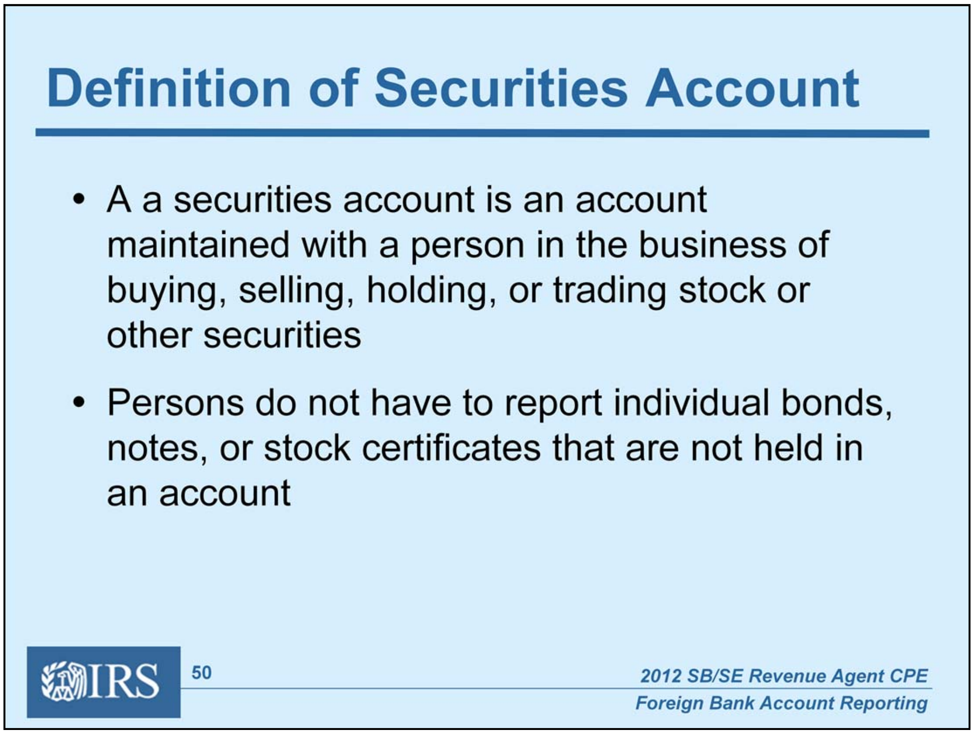
The current FBAR regulations define financial accounts to include bank accounts, securities accounts, and other financial accounts. The prior FBAR regulations used these terms but did not specifically define them. Only in the instructions to the prior FBAR forms is there any guidance on the meaning of these terms, and the prior FBAR instructions only listed examples of the specific accounts that need to be reported on the FBAR.

We are going to cover what are bank, securities, and other financial accounts as defined in the new FBAR regulations.



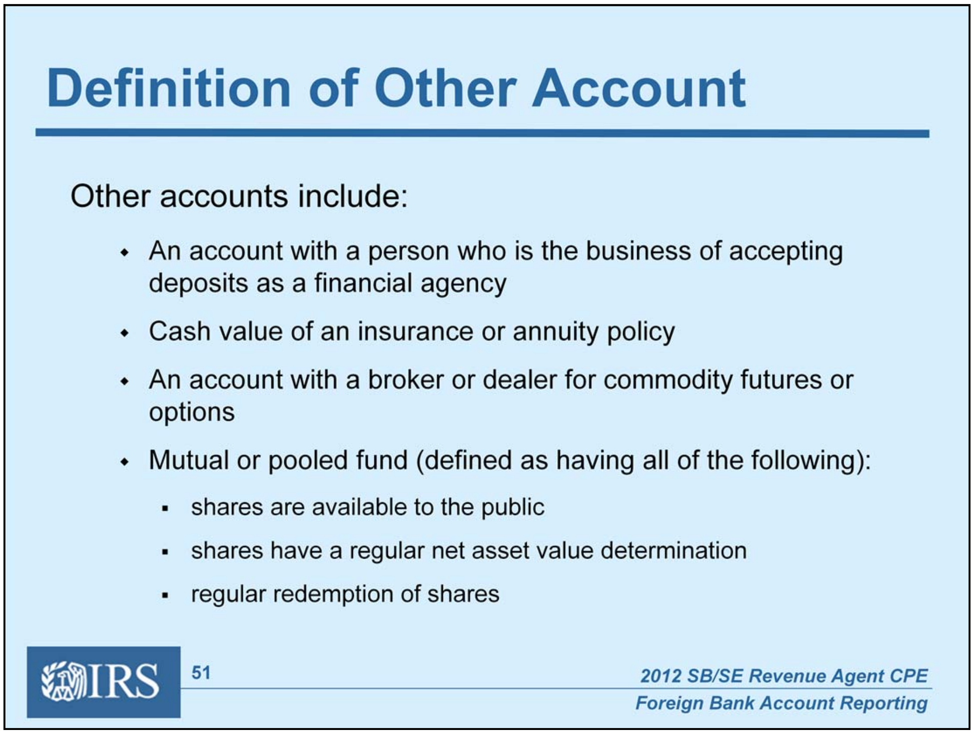
The new FBAR regulations define a bank account as any account maintained with a person in the business of banking.

Examples of bank accounts include demand-deposit accounts, which include checking and savings accounts, and time-deposit accounts such as certificates of deposit. Debit card accounts and pre-funded credit-card accounts are also considered to be bank accounts if such accounts are maintained with a person in the business of banking.



The new regulations define a securities account as any account maintained with a person in the business of buying, selling, holding, or trading stock or other securities.

The security account itself must be reported, assuming of course the account is otherwise a reportable account. The actual securities in the account, which could include stocks, bonds, and notes do not have to be reported. Also, persons do not have to report individual bonds, notes, or stock certificates that are not held inside of an account.



The new FBAR regulations define other financial accounts to include an account with a person who is the business of accepting deposits as a financial agency, the cash value of an insurance or annuity policy, an account with a broker or dealer for commodity futures or options, and a mutual or pooled fund.

A mutual fund is defined as fund where shares are available to the general public, the shares have a regular net asset value determination, and the fund allows for a regular redemption of shares.

See the regulations for additional information on the definitions of these types of accounts.

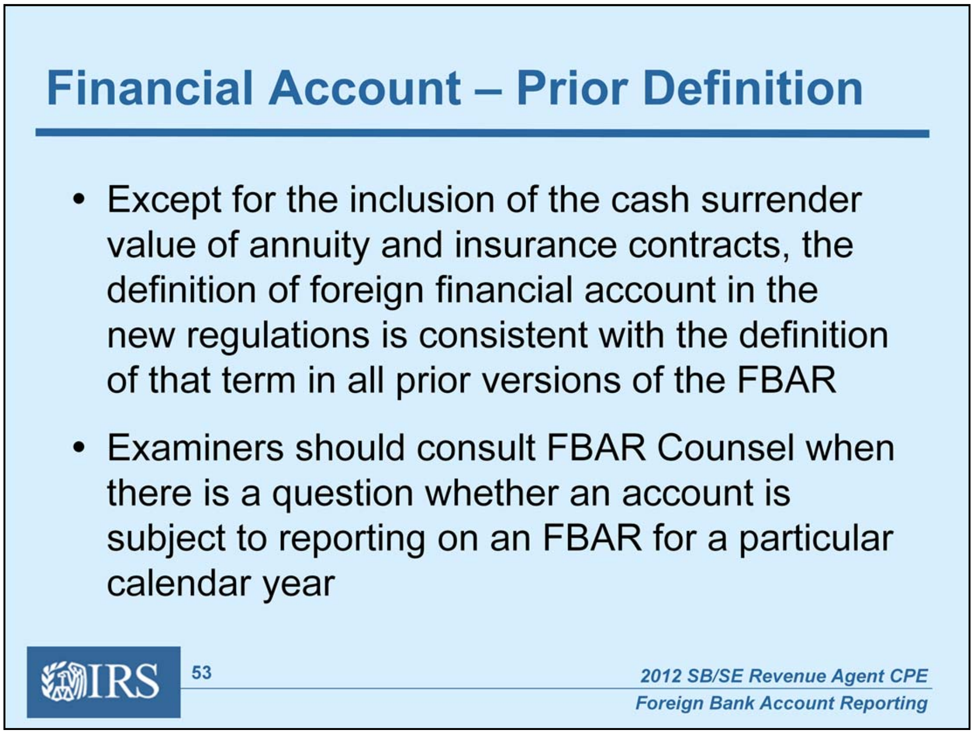
Financial Account – Notice 2010-33

- Pursuant to IRS Notice 2010-23, the term “comingled fund” does not mean a foreign hedge fund or a private equity fund
- The new regulations reserved for future guidance the treatment of investment companies other than mutual funds or investment pools
- Foreign mutual funds are subject to FBAR reporting

IRS 52 2012 SB/SE Revenue Agent CPE
Foreign Bank Account Reporting

As we previously discussed, IRS Notice 2010-23 stated that the term comingled fund does not mean a foreign hedge fund or a private equity fund. Therefore, hedge funds and private equity funds currently are not subject to FBAR reporting; however, the new FBAR regulations reserved, for future guidance, the treatment of investment companies other than mutual funds or investment pools.

Remember, foreign mutual funds could be subject to FBAR reporting.



Except for the inclusion of the cash surrender value of annuity and insurance contracts, the definition of foreign financial account in the new regulations is consistent with the definition of that term in all prior versions of the FBAR.

Examiners should consult FBAR Counsel when there is a question whether an account is subject to reporting on an FBAR for a particular calendar year.

Reportable Account Exceptions

- Foreign financial account not subject to reporting include accounts
  - Held by federal, state, local, and Indian Tribe governments,
  - With certain U.S. military banking or finance facilities
  - Correspondent accounts used for bank-to-bank settlements
- See 31 C.F.R. 1010.350(c)(4)
- Accounts held inside IRAs or tax-qualified retirement plans do not have to be reported by the owner, beneficiary, or participant in the plan

The new FBAR regulations define some accounts that are not subject to reporting by persons with a financial interest in, or signature authority over, such accounts. The excepted accounts include accounts held by federal, state, local, and Indian Tribe governments, as well as accounts with certain U.S. military banking or finance facilities, and correspondent accounts used for bank-to-bank settlements.

See 31 C.F.R. 1010.350(c)(4) for the full list of excepted accounts.

Also, the owner or beneficiary of an Individual Retirement Account does not have to report a foreign account held by, or within, the IRA. Similarly, a participant in, or beneficiary of, a tax-qualified retirement plan does not have to report a foreign account held by, or within, the retirement plan. Keep in mind, however, that the IRA or retirement plan itself may have to report the foreign account.

Aggregate Value of all Accounts

- An FBAR is required if the aggregate value of all foreign accounts exceeds $10,000
- To determine the maximum account value
  1. Determine the maximum value of each account for the calendar year using the currency of the account
  2. For each account not denominated in U.S. dollars, convert the maximum value of that account into U.S. dollars

IRS 55

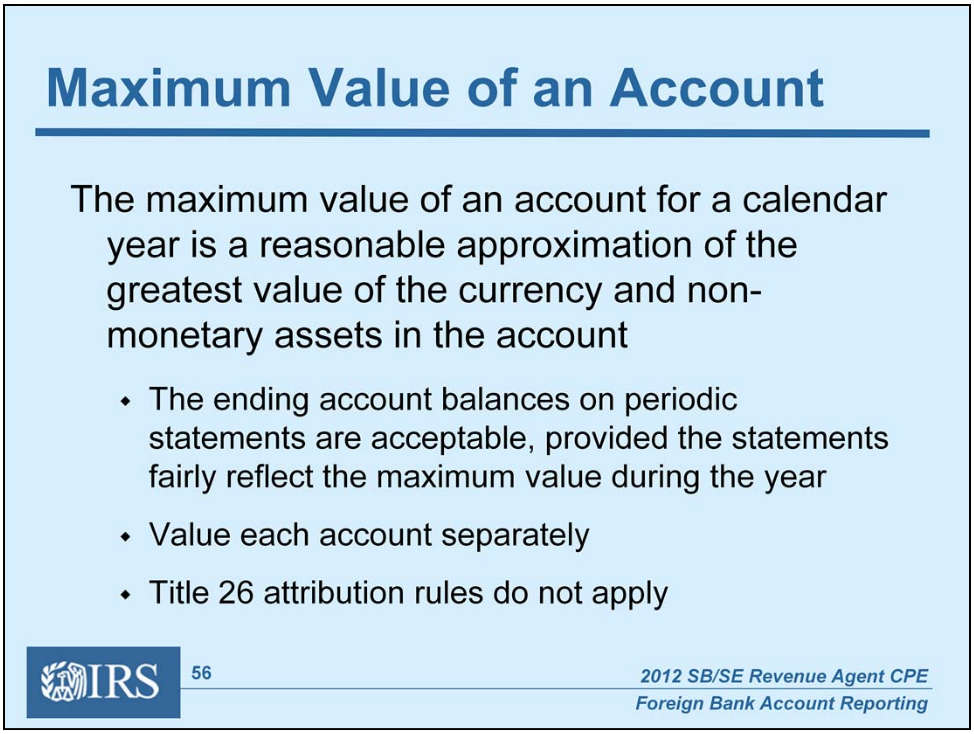
2012 SB/SE Revenue Agent CPE
Foreign Bank Account Reporting

The last key term that we need to define is aggregate balance. If you recall from the filing requirement for an FBAR, a U.S. Person has to file an FBAR if the aggregate value of foreign accounts exceeds $10,000.

To compute the aggregate value of all foreign accounts we first must compute the maximum value of each foreign account. The computation of the maximum value of each foreign account is a two-step process.

Step 1: Determine the maximum value of each account for the calendar year using the currency of the account.

Step 2: For each account not denominated in U.S. dollars, convert the maximum value of that account into U.S. dollars.

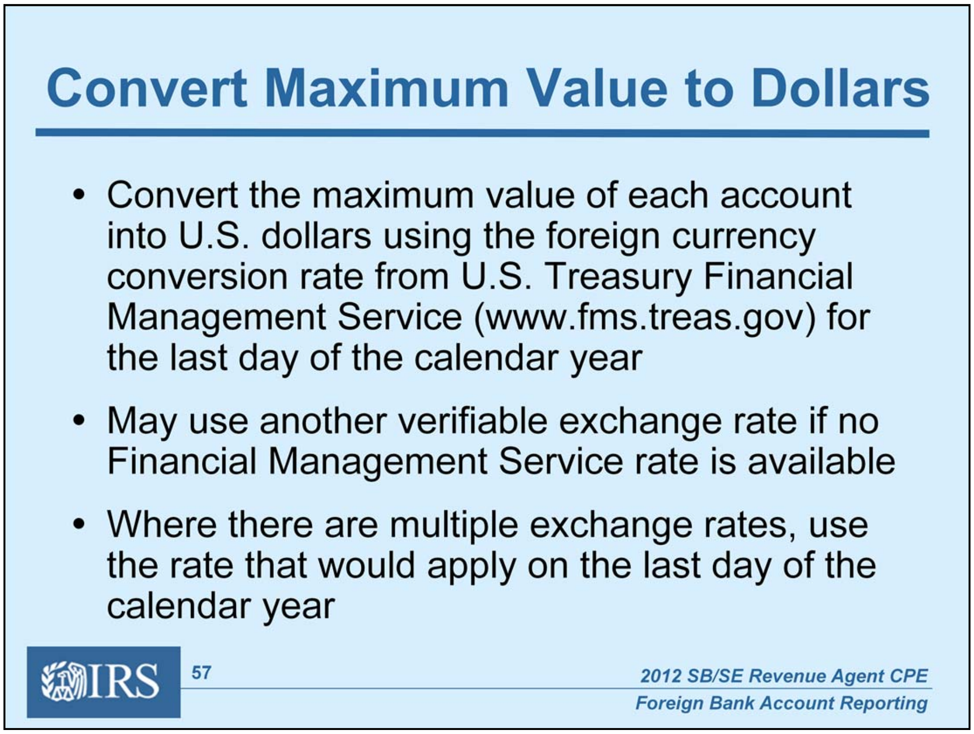


The maximum value of an account for a calendar year is a reasonable approximation of the greatest value of the currency and non-monetary assets in that account.

A persons may use the ending account balances on periodic statements to compute the maximum balance of the account, provided the ending account balances on the statements fairly reflect the maximum value of the account during the calendar year.

A person must compute the maximum value of each account separately.

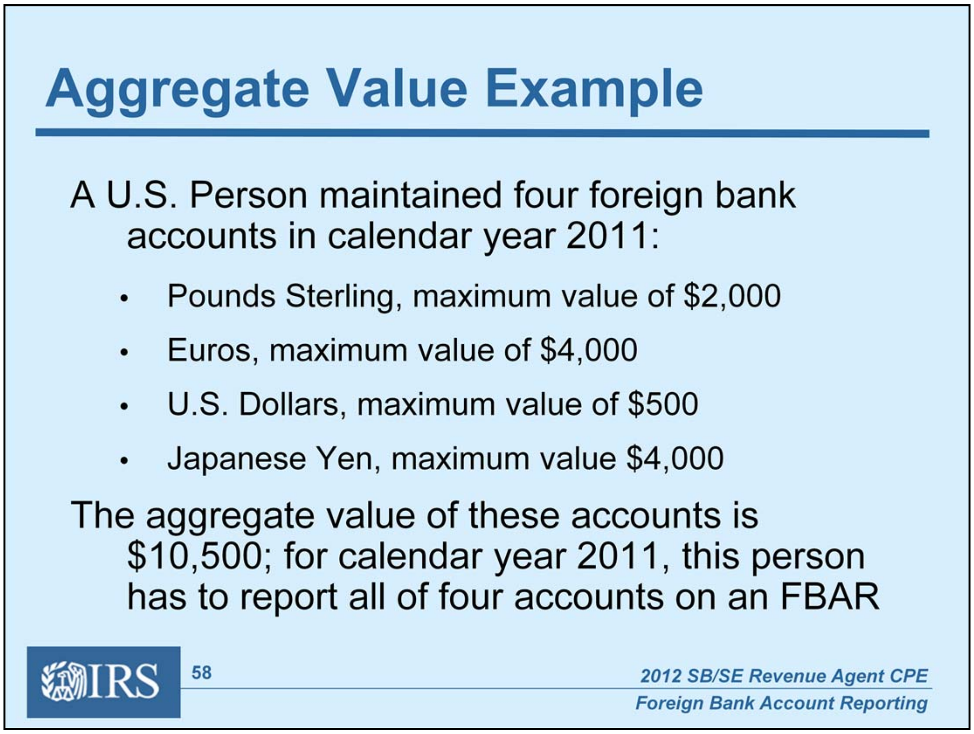
Do not use any of the attribution rules found in Title 26. Use only the Title 31 definitions to determine whether a person as a financial interest in, or signature or other authority over, a foreign account.



The second step to determine the maximum value of the account is to convert the maximum value of each account into U.S. dollars using the foreign currency conversion rate from the United States Treasury Financial Management Service, www.fms.treas.gov, for the last day of the calendar year.

A Person may use another verifiable exchange rate if the Financial Management Service site does not list an exchange rate for the specific currency of the foreign account. Where there are multiple exchange rates, the person should use the rate that would apply on the last day of the calendar year.

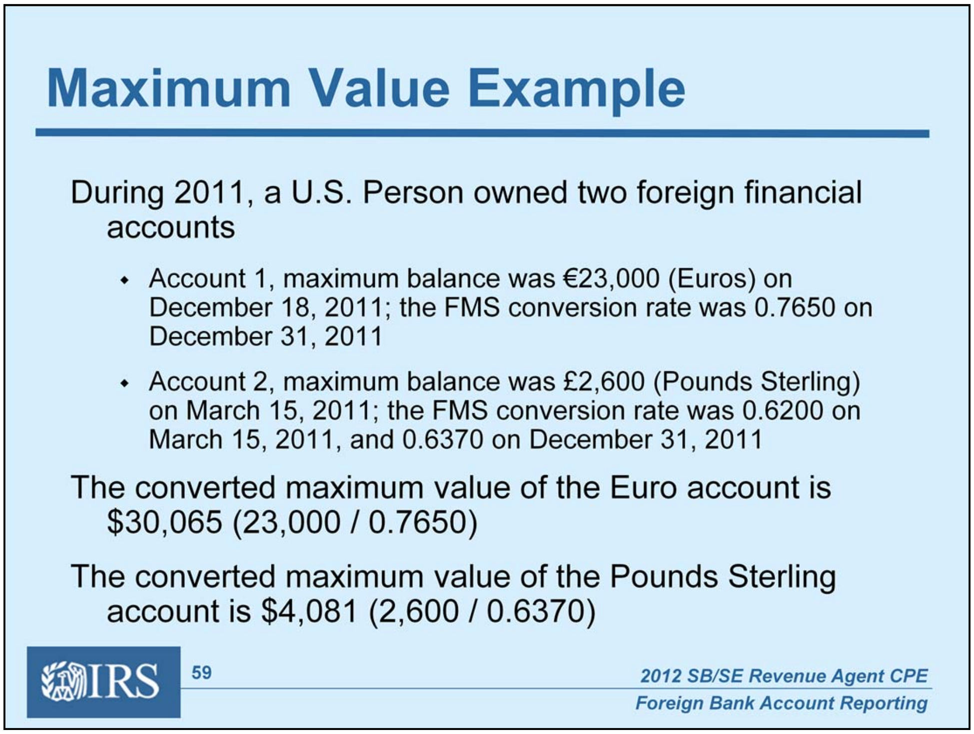
Note the person needs to convert the account to U.S. dollars using the conversion rate on the last day of the calendar year, even if the maximum balance of that account occurs on a date other than the last day of the calendar year.



Here is an example of computing the aggregate balance of foreign bank accounts.

A U.S. Person maintained four foreign bank accounts in calendar year 2011: one account in Pounds Sterling, with a maximum value when converted to dollars of $2,000; one account in Euros, with a maximum value of $4,000 when converted to dollars; one account in dollars, with a maximum value of $500; and one account in Japanese Yen, with a maximum value $4,000 when converted from Yen to dollars.

To compute the aggregate value, add the maximum value, in dollars, of each of the four accounts. In this example the aggregate value is $10,500. For calendar year 2011, this person has to report all of four accounts on an FBAR. Note that once the aggregate value of the accounts exceed $10,000, all foreign accounts are subject reporting, even those foreign accounts with a maximum value less than $10,000.



Here is an example of how to compute the maximum balance of a foreign bank account.

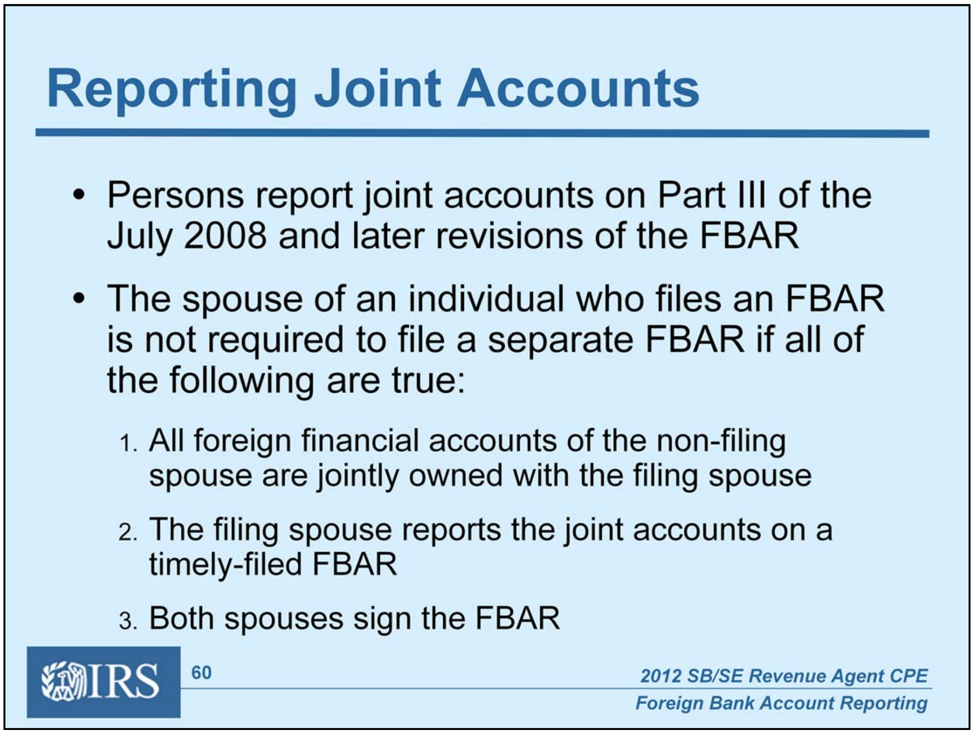
During 2011, a U.S. Person owned two foreign bank accounts.

Account number 1 is denominated in Euros, and reached the highest balance of 23,000 Euros on December 18, 2011. On December 31, 2011, the Financial Management Service, abbreviated FMS, Euro to U.S. Dollar exchange rate was 0.7650 Euros to the U.S. dollar.

Account number 2 is denominated in Pounds Sterling, and reached the highest balance of 2,600 Pounds on March 15, 2011. On March 15, 2011, the Financial Management Service Pounds Sterling to U.S. Dollar exchange rate was 0.6200. On December 31, 2011 the FMS Pounds Sterling to U.S. Dollar exchange rate was 0.6370.

The maximum balance of account number 1 is $30,065, computed by dividing the 23,000 Euro balance by the 0.7650 Euro-to-U.S. Dollar exchange rate on December 31, 2011.

The maximum balance of account number 2 is $4,081, computed by dividing the 2,600 Pounds balance by the 0.6370 Pounds Sterling-to-U.S. Dollar exchange rate on December 31, 2011. Note that although the account attained its maximum balance on March 15, 2011, for FBAR purposes the person must use the exchange rate on December 31, 2011.



Persons report joint accounts on Part 3 of the July 2008 and later revisions of the FBAR.

Married individuals may file a single FBAR to report accounts owned by both spouses.

The spouse of the individual who files an FBAR is not required to file a separate FBAR if all foreign financial accounts of the non-filing spouse are jointly owned with the filing spouse, the filing spouse reports the joint accounts on a timely-filed FBAR, and both spouses sign the FBAR.

The instructions to the March 2011 and later revisions of the FBAR has additional information on joint reporting of foreign financial accounts.

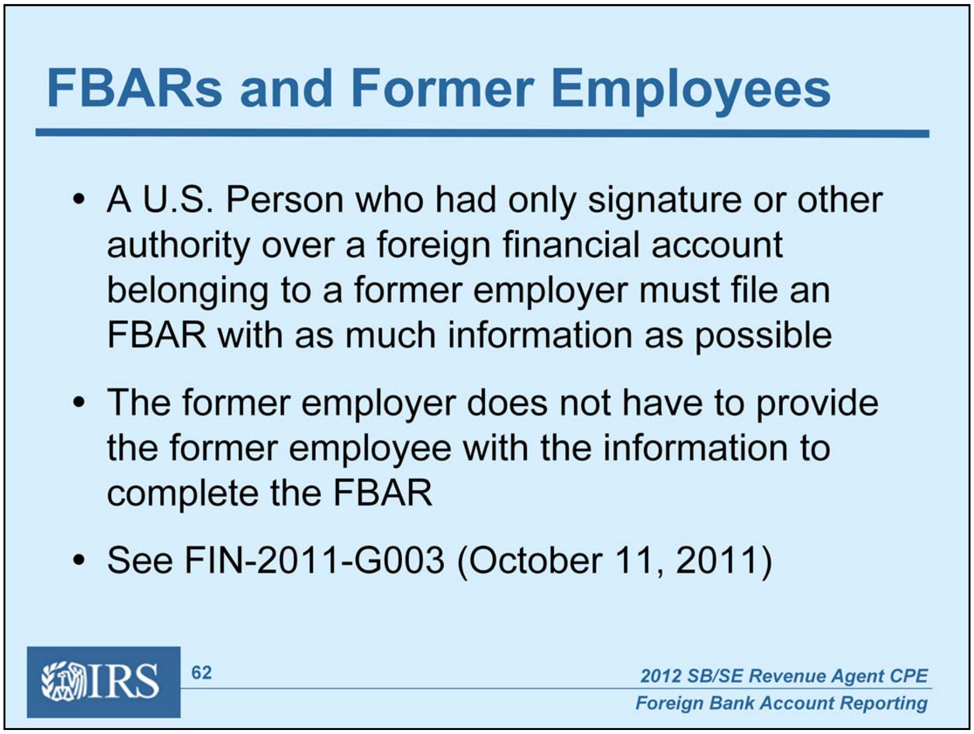
FBARs by Persons Outside the U.S.

- The March 2011 and later revisions of the FBAR have modified reporting for an individual U.S. Person who:
  1. Resides outside the United States
  2. Is an officer or employee of an employer that is physically located outside the United States
  3. Has signature authority over a foreign financial account owned or maintained by the employer
- These persons only have to identify the owner of the account

IRS 61 2012 SB/SE Revenue Agent CPE
Foreign Bank Account Reporting

The March 2011 and later revisions of the FBAR have modified reporting requirements for an individual U.S. Person who resides outside the United States, is an officer or employee of an employer that is physically located outside the United States, and has signature authority over a foreign financial account owned or maintained by the employer.

Generally, a qualifying individual only has to identify the owner of the account and does not have to provide details such as bank account numbers or account balances. This narrow exception exists to accommodate individuals who are subject to both U.S. law and the law of the foreign country where the person resides. In such cases, the foreign law may have disclosure restrictions regarding financial accounts. This modified reporting allows such a person to comply with the U.S. law without violating the law of the country where the person resides.



A U.S. Person who had only signature or other authority over a foreign financial account belonging to a former employer must file an FBAR to report his signature or other authority over the former employer's account. The FBAR filed by the former employee must contain as much information as possible, but the former employer does not have to provide the former employee with any information to complete the FBAR

See FinCEN guidance FIN-2011-G003 (October 11, 2011) for additional information concerning modified FBAR reporting by former employees.

FBAR Recordkeeping Requirements

- For each reportable foreign account a U.S. Person must maintain the following:
  - the name in which the account is maintained
  - the number or other designation of the account
  - the name and address of the foreign bank or other person with whom the account is maintained
  - the type of account
  - the maximum value of the account during the reporting period
- See 31 CFR 1010.420 (formerly 31 CFR 103.32)

IRS 63

2012 SB/SE Revenue Agent CPE
Foreign Bank Account Reporting

For each reportable foreign account , a United States Person must maintain the following records.

•the name in which the account is maintained

•the number or other designation of the account

•the name and address of the foreign bank or other person with whom the account is maintained

•the type of account

•the maximum value of the account during the reporting period

See 31 CFR 1010.420, formerly 31 CFR 103.32.

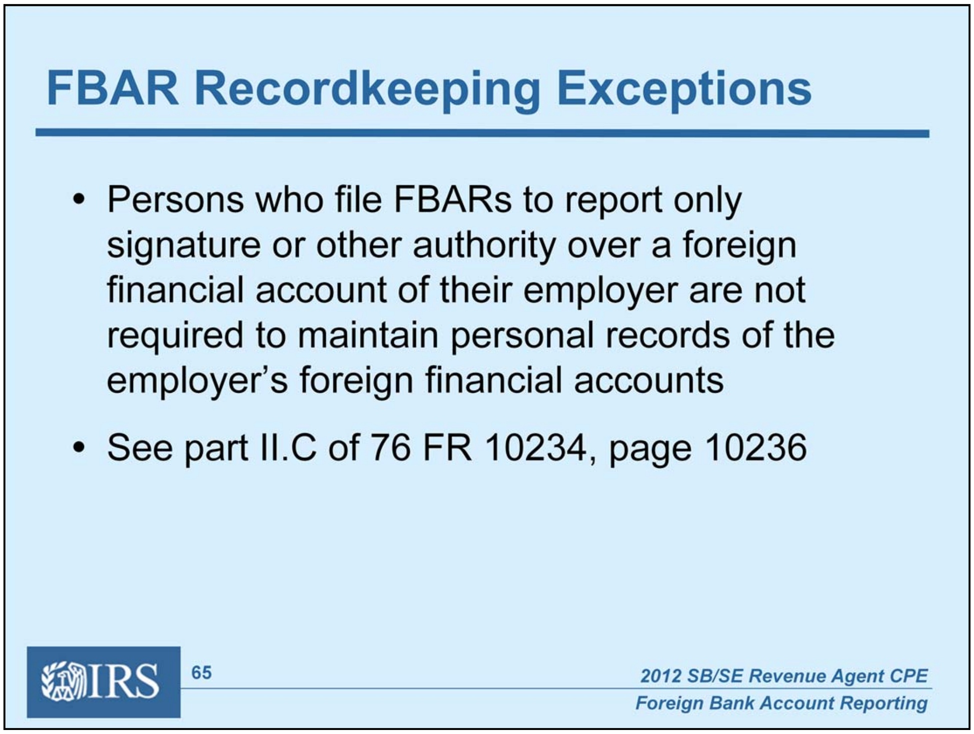
FBAR Record Retention

- A person required to maintain records must retain the information for five years
- A person required to maintain records must make the records available for inspection as authorized by law
- The five-year retention period is extended for the length of time of a criminal proceeding against the person for failing to file a federal income tax return or filing a false federal income tax return

IRS 64

2012 SB/SE Revenue Agent CPE
Foreign Bank Account Reporting

A person required to maintain records must retain the information for five years, and that person must make the records available for inspection as authorized by law. The five-year retention period is extended for the length of time of a criminal proceeding against the person for failing to file a federal income tax return or filing a false federal income tax return.



In the preamble to the final FBAR regulations, FinCEN clarified that persons who file FBARs to report only signature or other authority over a foreign financial account of their employer are not required to maintain personal records of the employer's foreign financial accounts.

See part II.C of 76 FR 10234 at page 10236.

Statutory FBAR Civil Penalties

- 31 USC 5321(a)(5) grants the Secretary the power to impose civil penalties for FBAR violations
- 5321(a)(5)(B) defines the general penalty for violations (non-willful penalty)
- 5321(a)(5)(C) defines the penalty for willful violations
- Violations include
  - failing to file an FBAR,
  - filing an inaccurate or incomplete FBAR
  - failing to retain records

IRS 66 2012 SB/SE Revenue Agent CPE
Foreign Bank Account Reporting

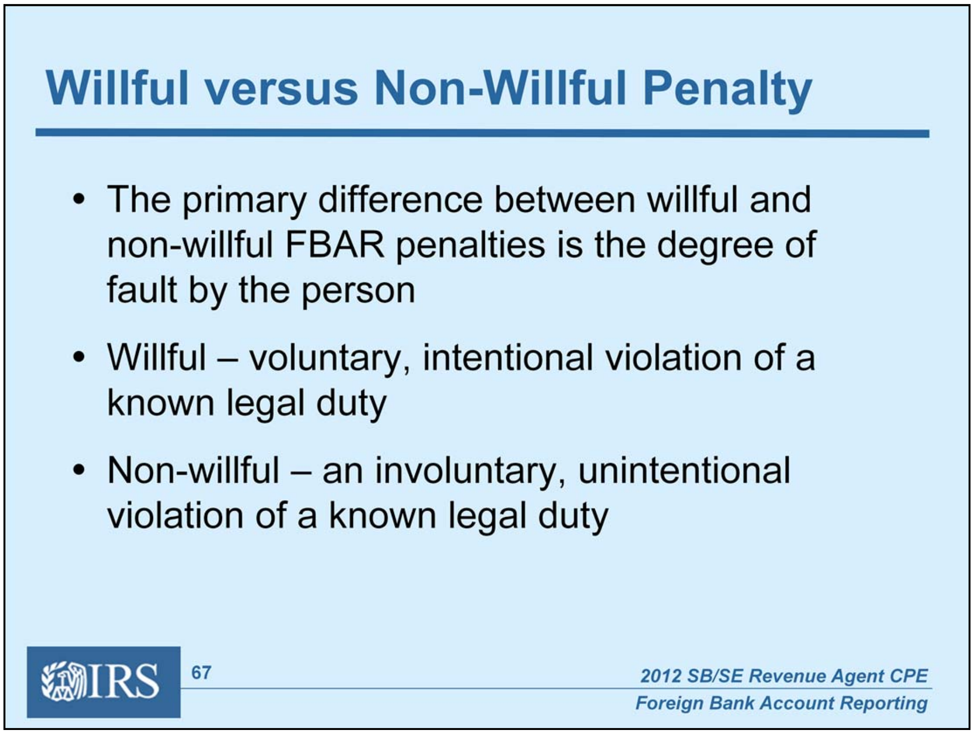
So far we have covered the requirements to file FBARs, both under the old and new Treasury Regulations. Now we will move on and cover the civil penalties for failing to file the FBAR. Of course, there are also criminal penalties related to Title 31 information reporting, but those penalties are handled by our friends in criminal investigation

There are two civil penalties for failing to report foreign bank accounts. Title 31, United States Code (USC) 5321(a)(5) grants the Secretary of the Treasury the power to impose civil penalties for FBAR violations.

Section 5321(a)(5)(B) defines the general penalty for violations; this penalty is known as the non-willful FBAR penalty.

Section 5321(a)(5)(C) defines the penalty for willful violations.

A violation is where a person fails to file an FBAR, a person files an inaccurate or incomplete FBAR, or a person fails to retain the records required by law.

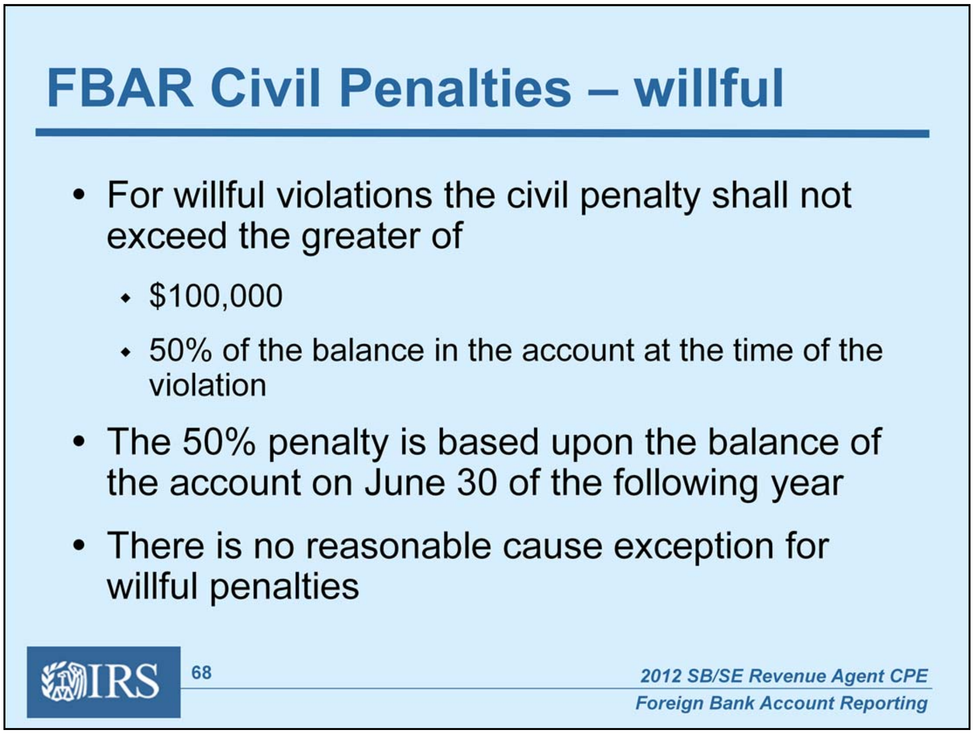


The primary difference between the willful penalty and non-willful penalty is the degree of fault of the person who failed to comply with the FBAR reporting requirements.

The general definition of willful is the voluntary, intentional violation or disregard of a known legal duty. Notice that the two important concepts in the definition of willfulness are knowledge and intent.

The general definition of non-willfulness is an involuntary, unintentional violation or disregard of a known legal duty. In other words, the person lacked an intent to violate the law, but nonetheless did violate the law.

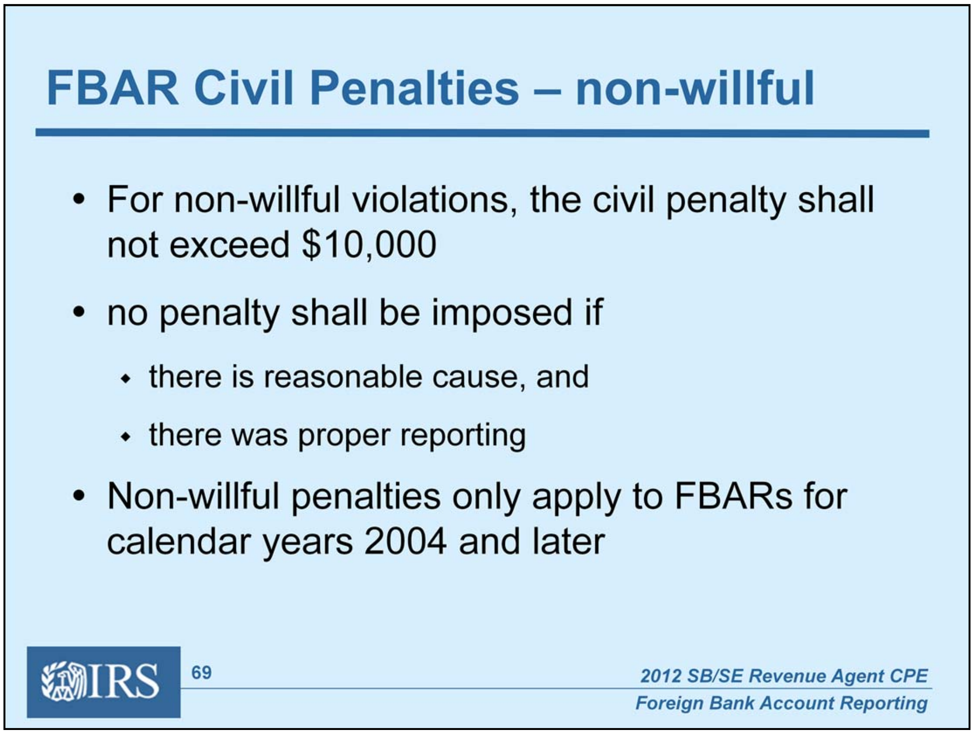
For FBAR penalty cases, it is up you, the examiner, to prove that a person willfully violated the FBAR reporting requirements. If there is not sufficient evidence to prove willfulness, then the non-willful penalty should be considered, unless there is a reasonable cause for the FBAR violations, in which case no FBAR penalties should be asserted.



The penalty for willful violations shall not exceed the greater of $100,00 or 50 percent of the balance in the account at the time of the violation.

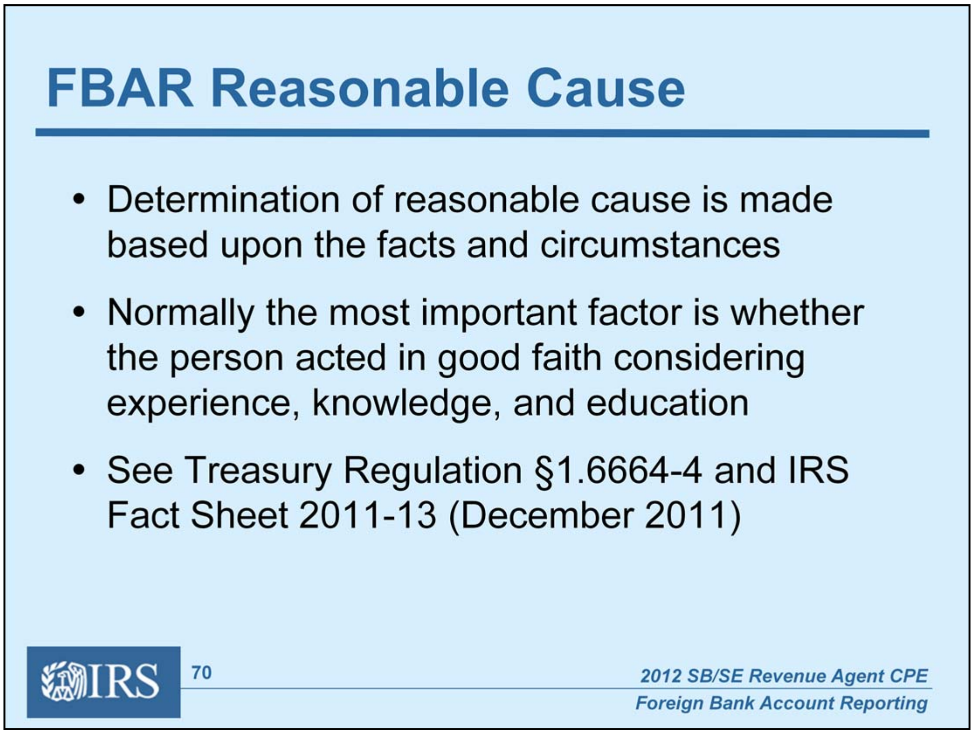
Where the maximum penalty is based upon the balance in the account, the statute states the penalty is computed using the balance of the account on the date of the violation. Since the FBAR is due by June 30 of the following calendar year, the maximum willful FBAR penalty is computed using the balance on the due date of the FBAR.

There is no reasonable cause exception for willful violations.



The penalty for non-willful violations shall not exceed $10,000. There is no penalty if the person can show there was a reasonable cause for the violation, and the person files a complete and accurate FBAR.

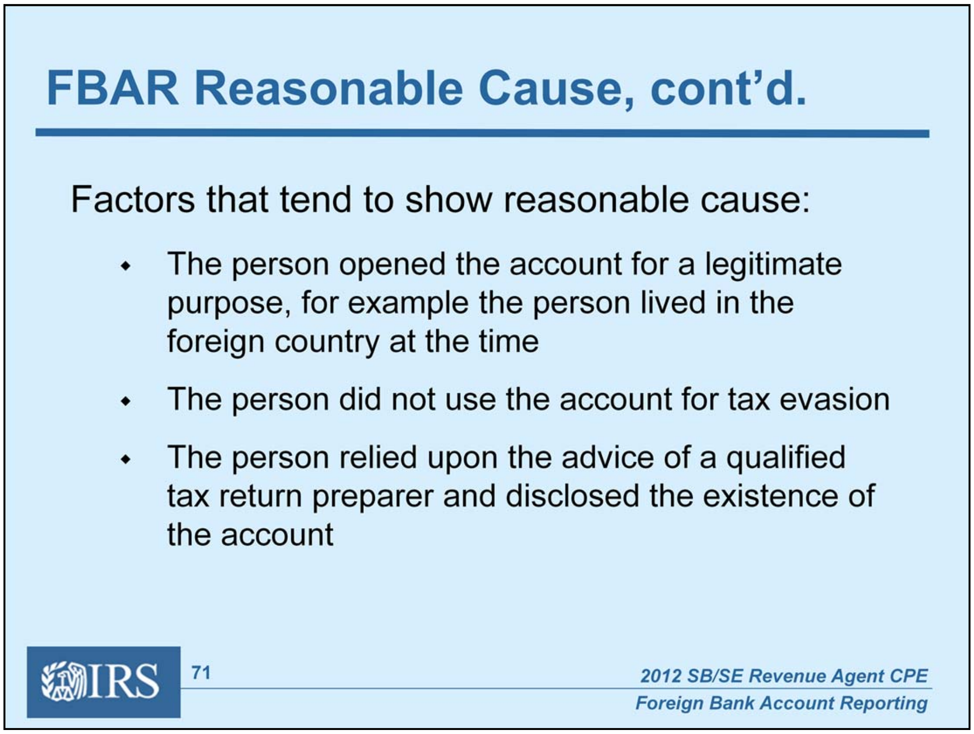
Non-willful penalties only apply to FBARs for calendar years 2004 and later.



Whether a person has reasonable cause for failing to file an FBAR must be determined based upon the specific facts and circumstances of each case.

Normally the most important factor to consider is whether the person acted in good faith, taking into account the experience, knowledge, and education of the person.

Although not dealing with FBARs, Treasury Regulation section 1.664-4 contains a good discussion of reasonable cause that may help you determine whether reasonable cause exists with respect to for FBAR violations. Also, IRS Fact Sheet 2011-12, dated December 2011, has a discussion of reasonable cause for FBAR violations.

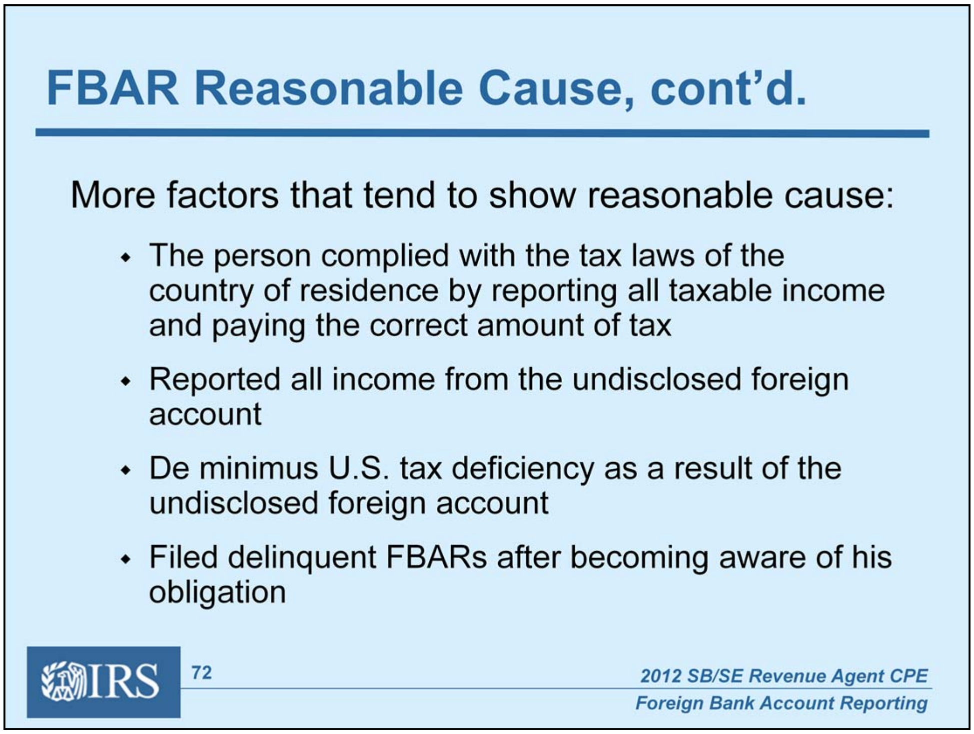


Some of the factors that tend to show reasonable cause are

The person opened the foreign account for a legitimate purpose, for example the person lived in the foreign country at the time he opened the account.

The person did not use the account for tax evasion.

The person relied upon the advice of a qualified tax return preparer and disclosed the existence of the account to the return preparer.

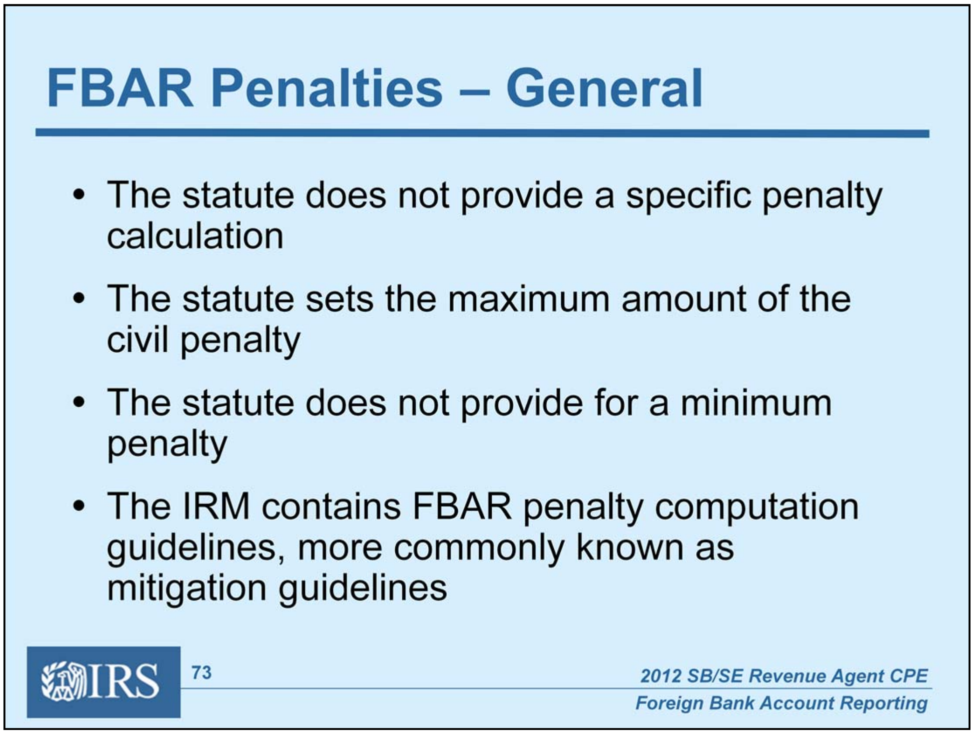


Additional factors that tend to show reasonable cause are:

The person complied with the tax laws of the country of residence by reporting all taxable income and paying the correct amount of tax.

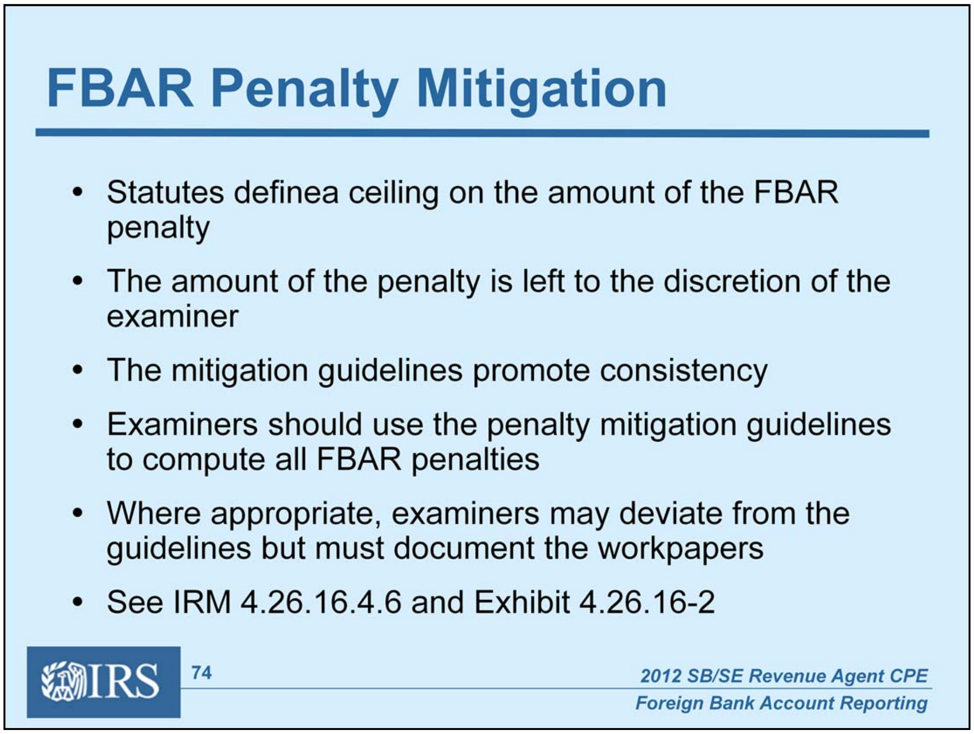
The person reported all income from the undisclosed foreign account, or the person owes a de minimus amount of U.S. tax on the unreported income from the undisclosed foreign account.

After becoming aware of his obligation to report foreign accounts, the person promptly filed delinquent FBARs and timely subsequent FBARs.



Unlike most civil penalties, the Bank Secrecy Act does not set-forth a method to compute FBAR penalties. The statute provides only for a maximum penalty amount and no minimum penalty amount.

As a result of the flexibility of the statute, the IRM contains FBAR penalty mitigation guidelines that provide a framework to assist examiners with determining the appropriate amount of the FBAR penalty to assert.



As we previously discussed, the statute defines only the maximum amount of the FBAR penalty. The FBAR mitigation guidelines allow the examiner to determine the appropriate FBAR penalty to assert based upon the facts and circumstances of the case.

The IRS adopted the FBAR mitigation guidelines to promote consistency by examiners when exercising their discretion for similarly-situated persons subject to possible FBAR penalties, so examiners should use the penalty mitigation guidelines to compute FBAR penalties.

Examiners may deviate from the guidelines where the facts of the case warrant either a lesser or greater penalty amount than the amount of the penalty computed using the mitigation guidelines. Where an examiner believes it is appropriate to deviate from the mitigation guidelines, the examiner must document the reasons for the deviation in the workpapers for the FBAR penalty case.

The FBAR penalty mitigation guidelines are in IRM 4.26.16.4.6 and IRM Exhibit 4.26.16-2.

FBAR Penalty Mitigation Criteria

- Penalty mitigation is available to persons that meet all of the following:
    1. No history of criminal tax or BSA convictions for the preceding 10 years, and no prior FBAR penalty assessments
    2. No illegal sources of income in the foreign accounts
    3. Person cooperated during the examination
    4. No fraud penalty against the person for an underpayment of income tax for the year in question due to the failure to report income related to any amount in a foreign account
- Written approval of group manager

IRS 75

2012 SB/SE Revenue Agent CPE
Foreign Bank Account Reporting

FBAR penalty mitigation is available to any person that meets all of the following requirements:

There is no history of past criminal tax or BSA convictions for the preceding ten years, and no prior FBAR penalty assessments.

No illegal sources of income are in, or passed through, any of the person's foreign accounts.

The person cooperated during the examination.

The IRS did not sustain a civil fraud penalty against the person for an underpayment of tax for the year in question due to the failure to report income related to any amount that was in the foreign account.

The group manager must approve, in writing, all FBAR penalty assessments.

Level 1 Mitigation – Willful Penalties

- Maximum aggregate balance for all accounts to which the violations relate did not exceed $50,000
  - Compute the maximum balance for each account during the calendar year
  - Add the individual maximum balances to arrive at the aggregate balance
- Penalty is greater of $1,000 per violation or 5% of the maximum balance in the account
- If a person qualifies for Level 1 mitigation, apply the penalty computation to all accounts

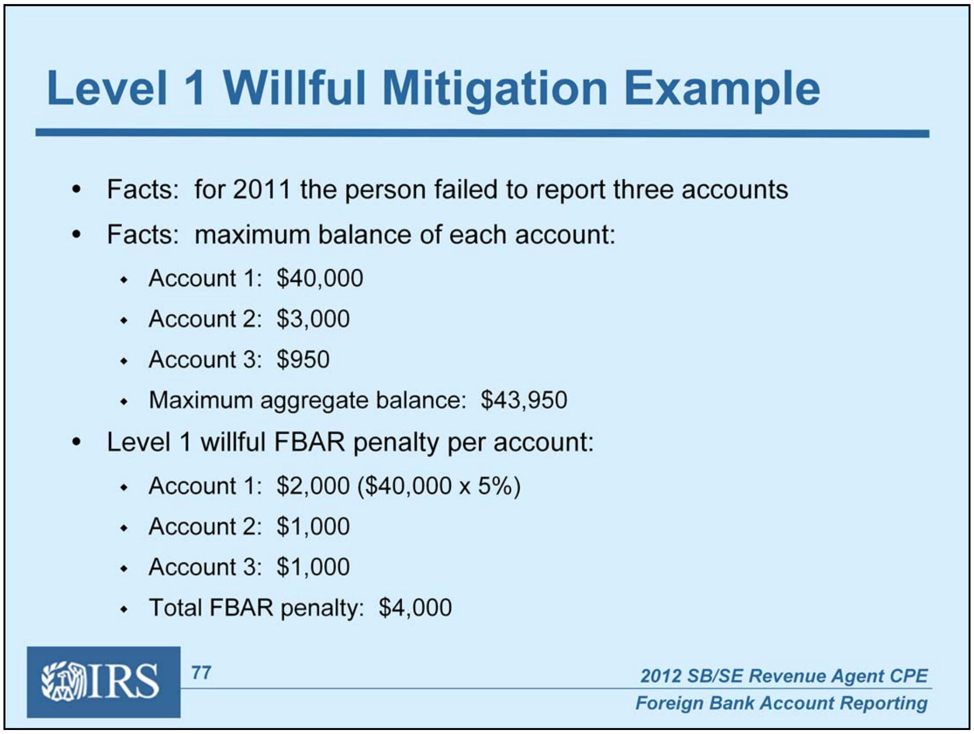
IRS 76

2012 SB/SE Revenue Agent CPE
Foreign Bank Account Reporting

Level 1 willful FBAR penalty mitigation applies to persons where the maximum aggregate balance for all accounts to which the violations relate did not exceed $50,000. The computation of the aggregate balance is identical to the computation we previously discussed regarding how to compute the aggregate balance for FBAR reporting purposes. To refresh your memory, first compute the maximum balance for each account during the calendar year, and then add together the maximum balance of each account to arrive at the aggregate balance.

The Level 1 willful FBAR penalty is greater of $1,000 per violation or 5% of the maximum balance in the account.

If a person meets the criteria for Level 1 willful FBAR penalty mitigation, the Level 1 penalty computation applies to all accounts. In a few minutes we will discuss Level 2 and greater willful FBAR penalty mitigation, where you will determine a separate penalty mitigation level for each account.



Now let's go over an example of a Level 1 willful FBAR penalty mitigation.

The facts of the case are that for 2011 a person failed to report all three of his foreign accounts. The maximum balance of account number 1 was $40,000, the maximum balance of account number 2 was $3,000, and the maximum balance of the account number 3 was $950. The maximum aggregate balance, which is determined by adding together the maximum balance of each of the three accounts, is $43,950. Since the maximum aggregate balance for this person did not exceed $50,000, and assuming the person meets all four mitigation criteria, Level 1 willful FBAR penalty mitigation is appropriate.

Under the Level 1 FBAR penalty mitigation guidelines, the FBAR penalty is the greater of $1,000 per violation or five percent of the maximum balance of each account. In our example, the penalty for account number 1 is $2,000, which is five percent of the $40,000 maximum balance. The penalty for account number 2 is $1,000, which is greater than five percent of maximum balance of the account (five percent of $3,000 is $150). The penalty for account number 3 is also $1,000, which is greater than five percent of maximum balance of the account (five percent of $950 is $47.50).

Therefore, in this example, the total FBAR penalties using the Level 1 mitigation guidelines is $4,000.

Level 2 Mitigation – Willful Penalties

- Level 1 willful mitigation does not apply (aggregate balance exceeds $50,000)
- Maximum balance in the account to which the violation relates did not exceed $250,000
- Penalty is the greater of
  - $5,000 per violation, or
  - 10% of the maximum balance in the account

IRS 78

2012 SB/SE Revenue Agent CPE
Foreign Bank Account Reporting

Level 2 willful FBAR penalty mitigation could apply to accounts held by a person that does not qualify for Level 1 willful mitigation because the maximum aggregate balance for all accounts to which the violations relate exceeded $50,000.

The person qualifies for Level 2 willful FBAR penalty mitigation for each account to which a violation relates, if the maximum balance in that account during the calendar year did not exceed $250,000.

The Level 2 willful FBAR penalty is the greater of $5,000 per violation or 10% of the maximum balance in the account.

Level 2 Willful Mitigation Example

- Facts: for 2011 the person failed to report three accounts
- Facts: maximum balance of each account:
  - Account 1: $55,000
  - Account 2: $13,000
  - Account 3: $2,000
  - Maximum aggregate balance: $70,000
- Level 2 willful FBAR penalty per account:
  - Account 1: $5,500 ($55,000 x 10%)
  - Account 2: $5,000
  - Account 3: $5,000
  - Total FBAR penalty: $15,500

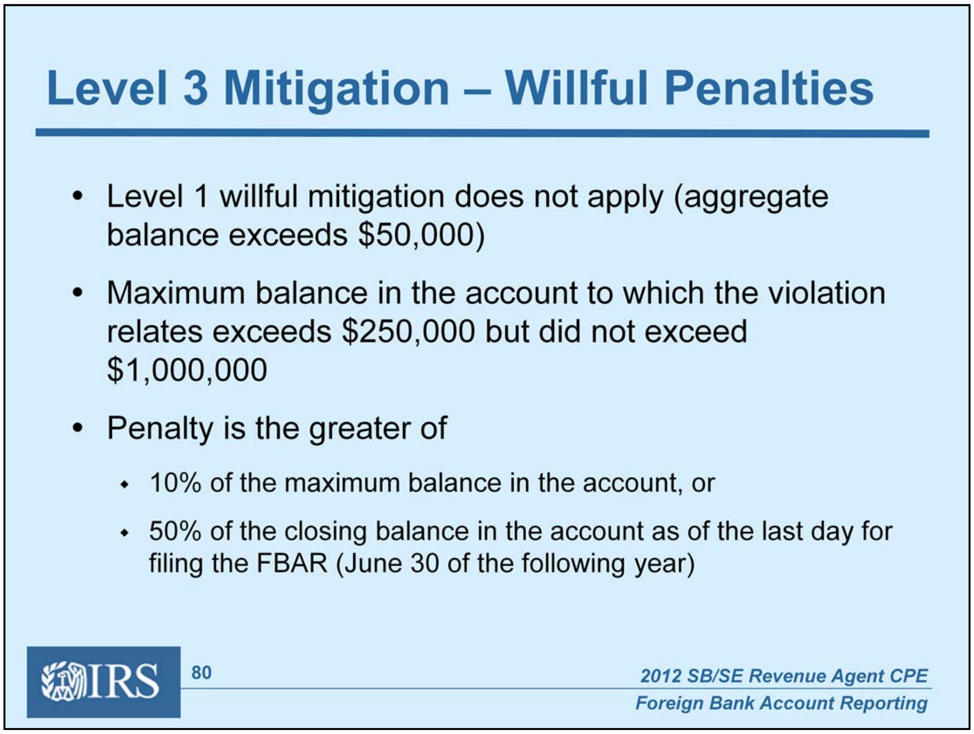
IRS 79 2012 SB/SE Revenue Agent CPE
Foreign Bank Account Reporting

Now let's go over an example of a Level 2 willful FBAR penalty mitigation.

The facts of the case are that for 2011 a person failed to report all three of his foreign accounts. The maximum balance of account number 1 was $55,000, the maximum balance of account number 2 was $13,000, and the maximum balance of the account number 3 was $2,000. The maximum aggregate balance, which is determined by adding together the maximum balance of each of the three accounts, is $70,000. Since the maximum aggregate balance for this person exceeded $50,000 the person does not meet the criteria for Level 1 willful FBAR penalty mitigation. Assuming the person meets all four mitigation criteria, Level 2 willful FBAR penalty mitigation is appropriate for each of the three accounts because the maximum balance of each account does not exceed $250,000.

Under the Level 2 FBAR penalty mitigation guidelines, the FBAR penalty is the greater of $5,000 per violation or ten percent of the maximum balance of each account. In our example, the penalty for account number 1 is $5,500, which is ten percent of the $55,000 maximum balance. The penalty for account number 2 is $5,000, which is greater than ten percent of the maximum balance of the account (ten percent of $13,000 is $1,300). The penalty for account number 3 is also $5,000, which is greater than ten percent of the maximum balance of the account (ten percent of $2,000 is $200).

Therefore, in this example, the total FBAR penalties using the Level 2 mitigation guidelines is $15,500.

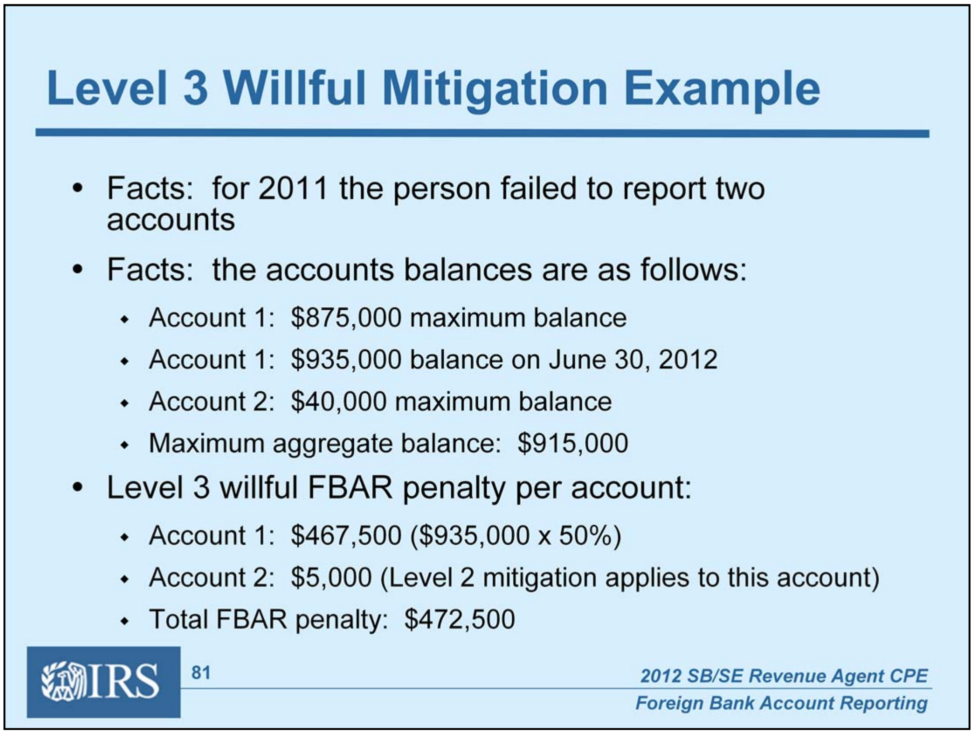


Level 3 willful FBAR penalty mitigation could apply to accounts held by a person that does not qualify for Level 1 willful mitigation because the maximum aggregate balance for all accounts to which the violations relate exceeded $50,000.

The person qualifies for Level 3 willful FBAR penalty mitigation for each account to which a violation relates if the maximum balance in that account during the calendar year was greater than $250,000 but did not exceed $1,000,000.

The Level 3 willful FBAR penalty is the greater of 10 percent of the maximum balance in the account, or 50 percent of the closing balance in the account as of the last day for filing the FBAR, which is June 30 of the following year.

Notice that under willful Level 3 mitigation the FBAR penalty could be the statutory maximum penalty.



Now let's go over an example of a Level 3 willful FBAR penalty mitigation.

The facts of the case are that for 2011 a person failed to report both of his foreign accounts. The maximum balance of account number 1 was $875,000, and the balance on June 30, 2012 was $915,000. The maximum balance of account number 2 was $40,000. The maximum aggregate balance, which is determined by adding together the maximum balance of both accounts, is $975,000. The maximum aggregate balance for this person exceeded $50,000, so the person does not meet the criteria for Level 1 willful FBAR penalty mitigation. Assuming the person meets all four mitigation criteria, willful FBAR penalty mitigation is appropriate for both of the accounts.

For account number 1, Level 3 willful FBAR mitigation applies because the maximum balance of the account is greater than $250,000 but did not exceed $1,000,000. Under Level 3 willful mitigation, the penalty is the greater of 10 percent of the maximum balance of the account, which in our example is $87,500, or 50 percent of the balance on the date of violation, which in our example is $467,500. Remember that the due date of the FBAR is June 30 of the following year. For account number 1, the Level 3 willful penalty is the greater of $87,500 or $467,500, so the penalty is $467,500.

The maximum balance of account number 2 is $40,000. Since the maximum balance of this account did not exceed $250,000, the appropriate mitigation level for this account is Level 2. Under the willful Level 2 FBAR penalty mitigation guidelines, the FBAR penalty is the greater of $5,000 or ten percent of the maximum balance of the account. In our example, the penalty for account number 2 is $5,000, which is greater than ten percent of maximum balance of the account (ten percent of $40,000 is $4,000).

We computed the penalty for account number 1 using the Level 3 guidelines, and we computed the penalty for account number 2 using the Level 2 guidelines. Therefore, in this example, the total willful FBAR penalties using the mitigation guidelines is $472,500.

Level 4 Mitigation – Willful Penalties

- Level 1 willful mitigation does not apply (aggregate balance exceeds $50,000)
- Maximum balance in the account exceeded $1,000,000
- Penalty is the greater of
  - $100,000, or
  - 50% of the closing balance in the account as of the last day for filing the FBAR (June 30 of the following year)

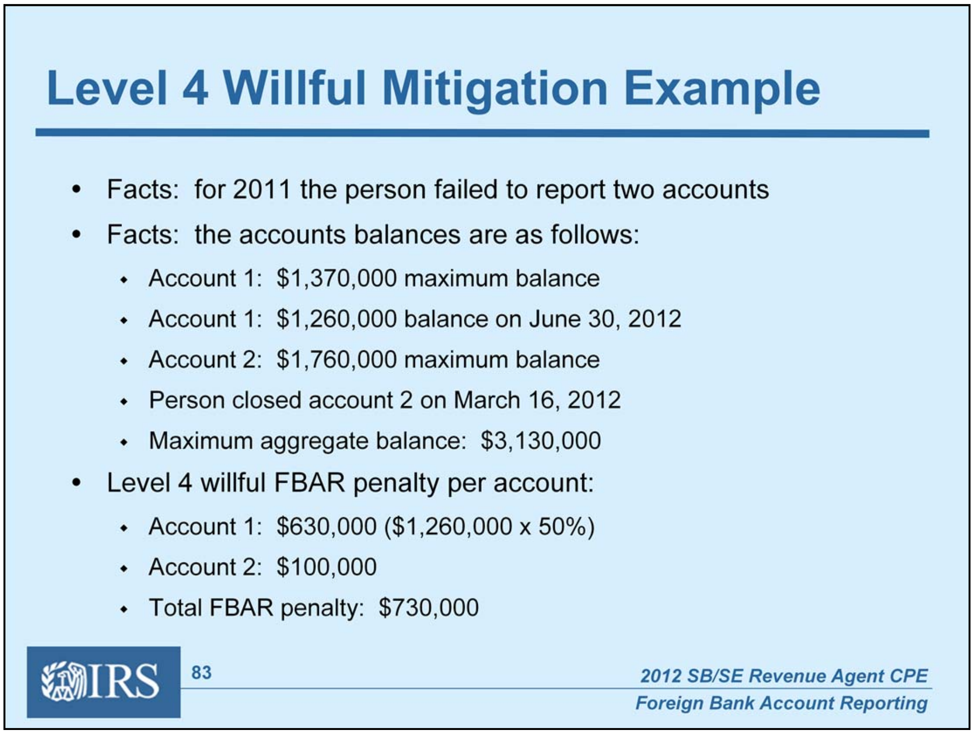
IRS 82 2012 SB/SE Revenue Agent CPE
Foreign Bank Account Reporting

Level 4 willful mitigation could apply to accounts held by a person that does not qualify for Level 1 willful mitigation because the maximum aggregate balance for all accounts to which the violations relate exceeded $50,000.

The Level 4 willful FBAR penalty computation applies to each account where the maximum balance exceeded $1,000,000.

The Level 4 willful FBAR penalty is the greater of $100,000 or 50 percent of the closing balance in the account as of the last day for filing the FBAR, which is June 30 of the following year.

A Level 4 willful FBAR penalty is the statutory maximum willful FBAR penalty.



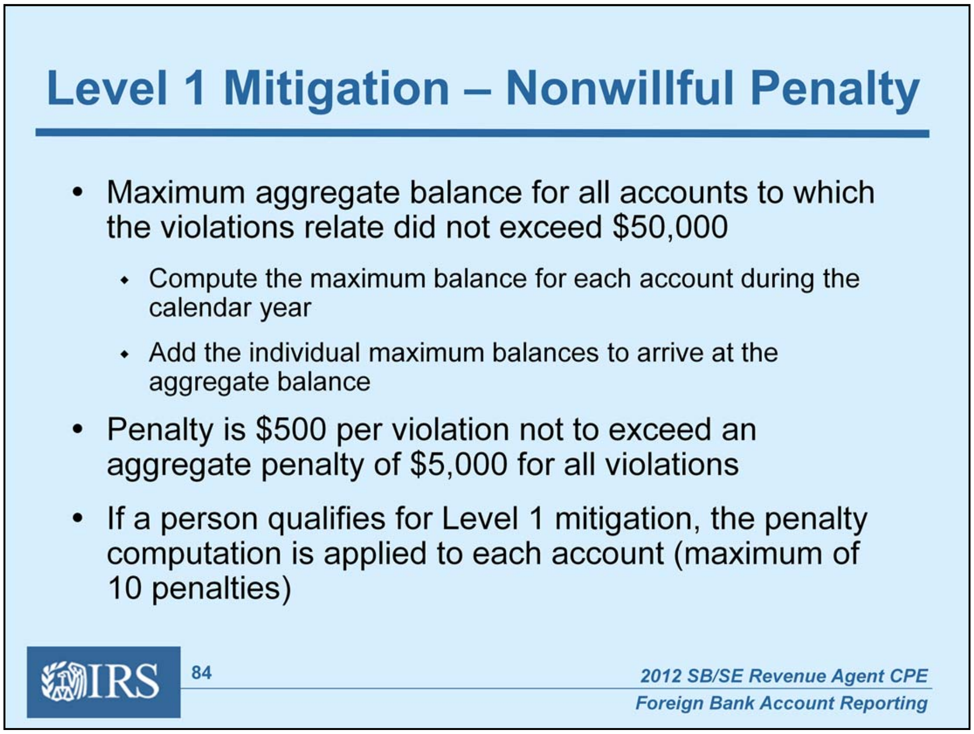
Here is an example of Level 4 willful FBAR penalty mitigation.

The facts of the case are that for 2011 a person failed to report both of his foreign accounts. The maximum balance of account number 1 was $1,370,000, and the balance on June 30, 2012 was $1,260,000. The maximum balance of account number 2 was $1,760,000, and the person closed account number 2 on March 16, 2012. The maximum aggregate balance, which is determined by adding together the maximum balance of both accounts, is $3,130,000. The maximum aggregate balance for this person exceeded $50,000, so the person does not meet the criteria for Level 1 willful FBAR penalty mitigation. Assuming the person meets all four mitigation criteria, willful FBAR penalty mitigation is appropriate for both of the accounts.

For account number 1, Level 4 willful FBAR mitigation applies because the maximum balance of the account exceeded $1,000,000. Under Level 4 willful mitigation, the penalty is the greater of $100,000 or 50 percent of the balance on the date of violation. For account 1, the balance of the date of the violation, which is June 30, 2012, was $1,260,000, so the Level 4 penalty for this account is 50 percent of $1,260,000, which is $630,000.

The maximum balance of account number 2 was $1,760,000. Level 4 willful FBAR mitigation applies to account number 2 because the maximum balance of the account exceeded $1,000,000. Since the person closed account number 2 before the due date of the 2011 FBAR, the balance of the account on June 30, 2012 is zero. As a result, the Level 4 willful FBAR penalty is $100,000, which is the greater of $100,000 or 50 percent of the balance in the account on June 30, 2012.

Therefore, in this example, the total willful FBAR penalties using the mitigation guidelines is $730,000.



We just covered the FBAR penalty mitigation guidelines for willful penalties. Now we will cover the FBAR mitigation guidelines for non-willful FBAR penalties. As we go through the non-willful FBAR mitigation guidelines you should notice the guidelines are very similar to the willful FBAR penalty mitigation guidelines we just covered.

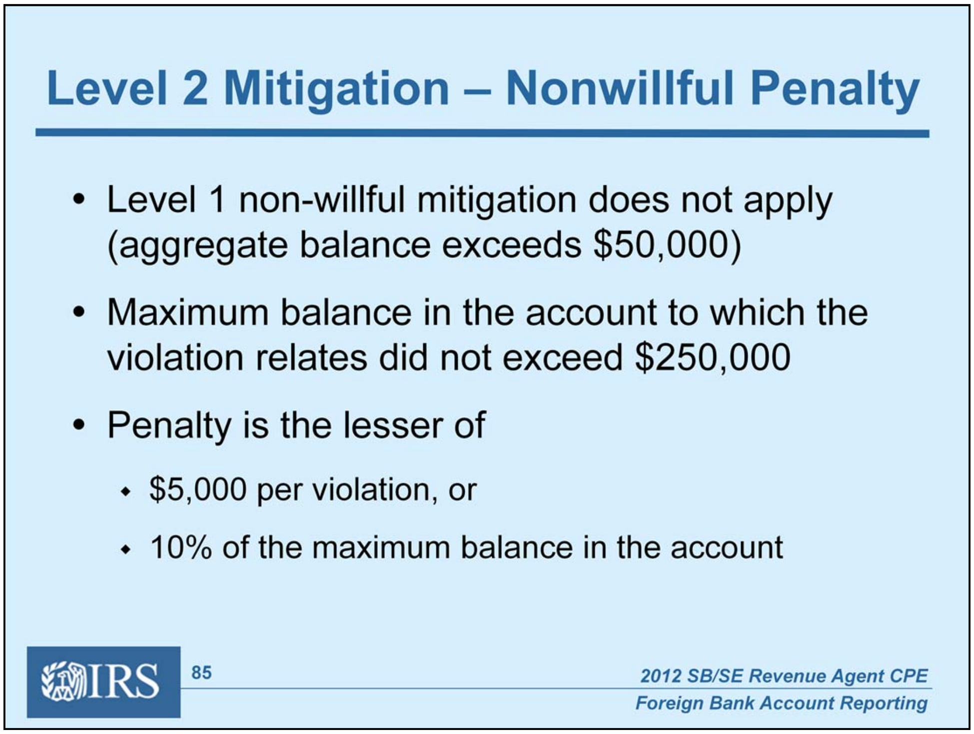
A person still must meet the four mitigation criteria we previously discussed. Level 1 non-willful FBAR penalty mitigation applies where the maximum aggregate balance of all the account to which the violations relate did not exceed $50,000 at any time during the year. To compute the maximum aggregate balance of all accounts, first compute the maximum balance for each account during the calendar year, and then add together the maximum balance of each account to arrive at the maximum aggregate balance.

The Level 1 non-willful FBAR penalty is greater of $500 per violation, not to exceed an aggregate penalty of $5,000 for all violations.

If a person meets the criteria for Level 1 non-willful FBAR penalty mitigation, the $500 Level 1 penalty applies to each account. Under Level 1 mitigation you cannot assert more than ten $500 penalties because the maximum aggregate penalty is $5,000.

Just like under willful penalty mitigation guidelines, you will apply Level 2 and greater non-willful FBAR penalty mitigation to each account.

Level 1 non-willful FBAR penalty mitigation is not that complicated, so there is no need for an example of Level 1 non-willful FBAR penalty mitigation.

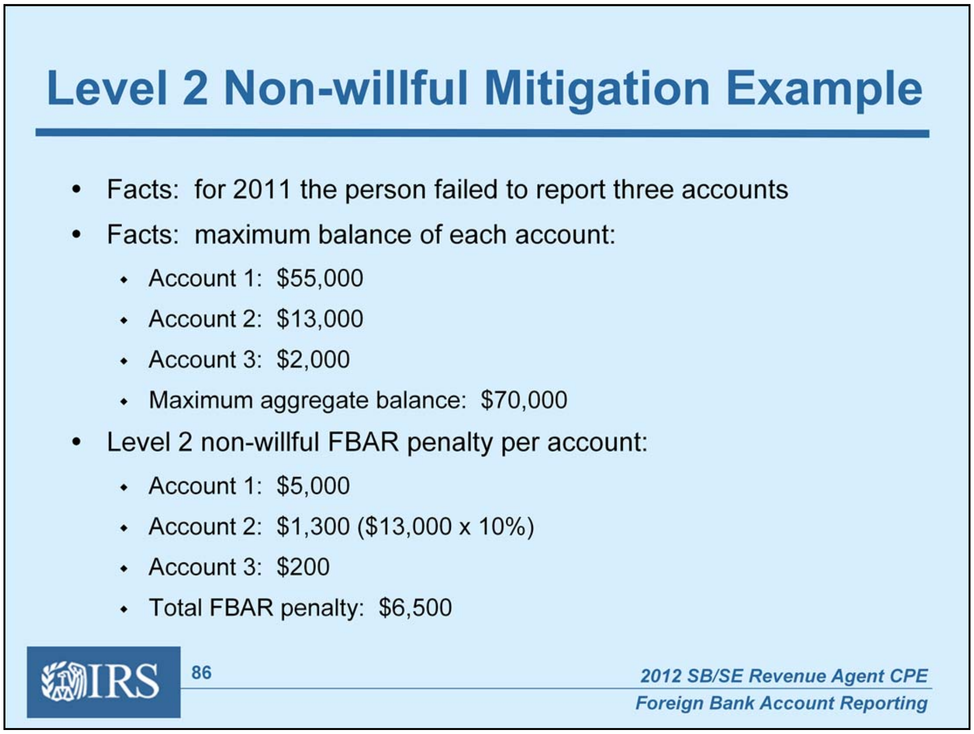


Level 2 non-willful mitigation could apply to accounts held by a person that does not qualify for Level 1 mitigation because the maximum aggregate balance for all accounts to which the violations relate exceeded $50,000.

The person qualifies for Level 2 non-willful FBAR penalty mitigation for each account to which a violation relates, if the maximum balance in that account during the calendar year did not exceed $250,000.

The Level 2 non-willful FBAR penalty is the lesser of $5,000 per violation or 10% of the maximum balance in the account.

When we discussed the Level 2 willful mitigation, the penalty was the greater of $5,000 or 10 percent of the value of the account. Notice that the Level 2 non-willful mitigation penalty is the lesser of $5,000 or 10 percent of the balance in the account.



Now let's go over an example of a Level 2 non-willful FBAR penalty mitigation. We are going to use the same facts as we used in the Level 2 willful FBAR penalty example to allow you to compare the two penalty computations.

The facts of the case are that for 2011 a person failed to report all three of his foreign accounts. The maximum balance of account number 1 was $55,000, the maximum balance of account number 2 was $13,000, and the maximum balance of the account number 3 was $2,000. The maximum aggregate balance, which is determined by adding together the maximum balance of each of the three accounts, is $70,000. Since the maximum aggregate balance for this person exceeded $50,000 the person does not meet the criteria for Level 1 non-willful FBAR penalty mitigation. Assuming the person meets all four mitigation criteria, Level 2 non-willful FBAR penalty mitigation is appropriate for each of the three accounts because the maximum balance of each account does not exceed $250,000.

Under the Level 2 FBAR non-willful penalty mitigation guidelines, the FBAR penalty is the lesser of $5,000 per violation or ten percent of the maximum balance in each account. In our example, the penalty for account number 1 is $5,000, because ten percent of the $55,000 maximum balance in the account, which is $5,500, exceeds $5,000. The penalty for account number 2 is $1,300, because ten percent of the maximum balance of the account is less than $5,000 (ten percent of $13,000 is $1,300). The penalty for account number 3 is $200, which is ten percent of the maximum balance in the account (ten percent of $2,000 is $200).

Therefore, in this example, the total FBAR penalties using the Level 2 non-willful mitigation guidelines is $6,500.

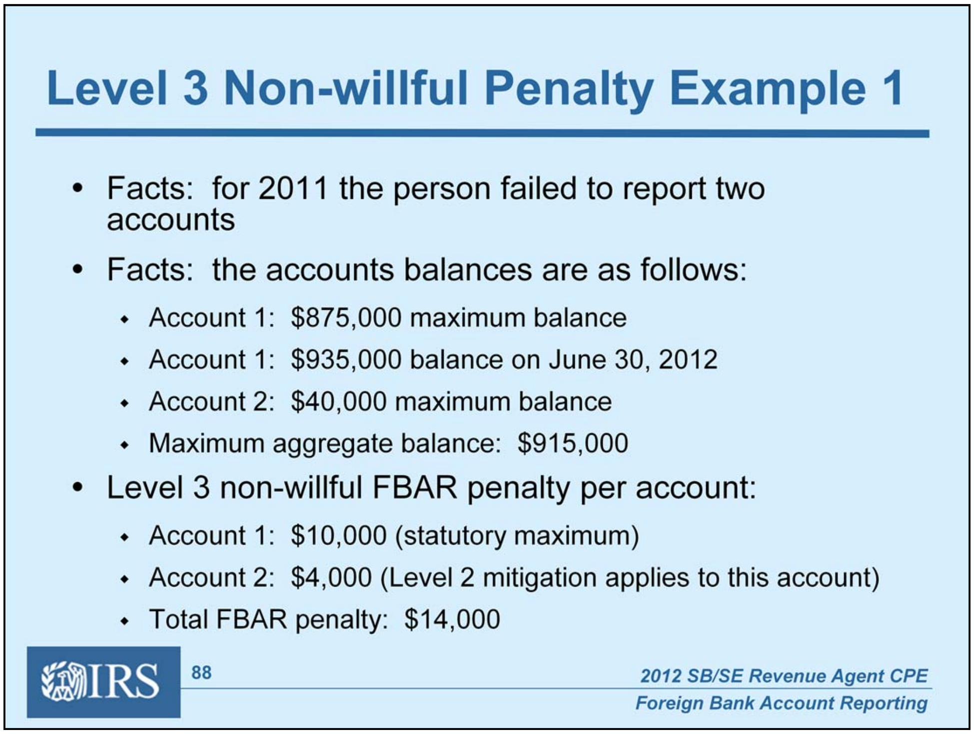
Level 3 Mitigation – Nonwillful Penalty

- Level 1 non-willful mitigation does not apply (aggregate balance exceeds $50,000)
- Maximum balance in the account to which the violation relates exceeded $250,000
- Penalty is $10,000 per violation (statutory maximum)

Level 3 non-willful penalty mitigation could apply to accounts held by a person that does not qualify for Level 1 mitigation because the maximum aggregate balance for all accounts to which the violations relate exceeded $50,000.

Level 3 non-willful penalties apply where the maximum balance in that account during the calendar year exceeded $250,000.

The Level 3 non-willful FBAR penalty is the statutory maximum penalty, which is $10,000.



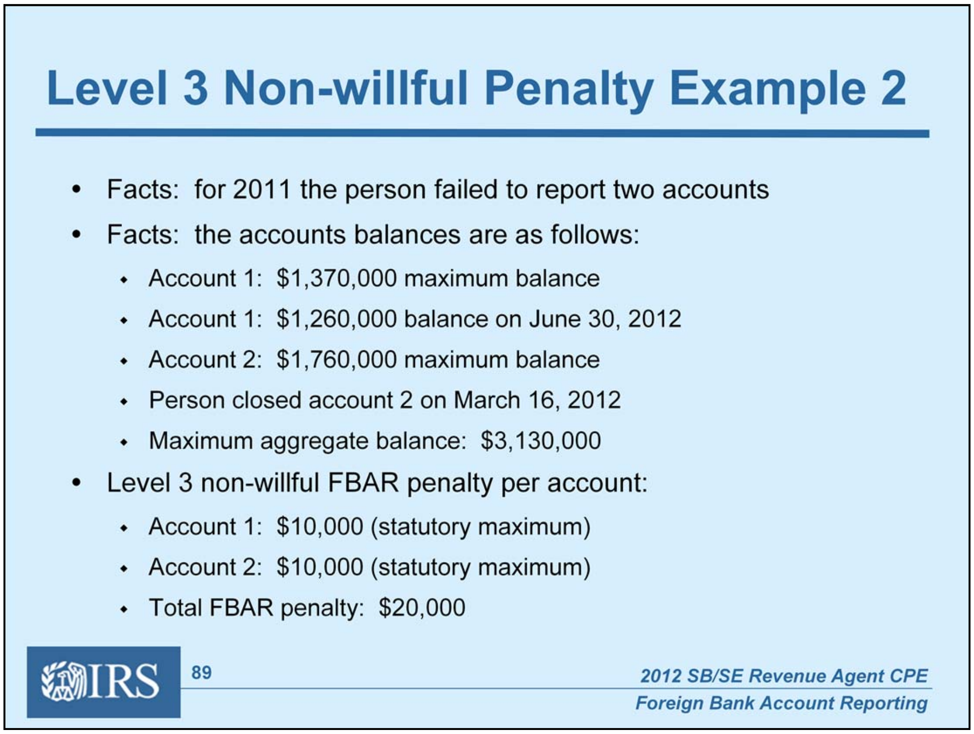
Now let's go over an example of a Level 3 non-willful FBAR penalty mitigation. The facts of this example are the same as the facts in the example for Level 3 willful FBAR penalty example to allow you to compare the two penalty computations.

The facts of the case are that for 2011 a person failed to report both of his foreign accounts. The maximum balance of account number 1 was $875,000, and the balance on June 30, 2012 was $935,000. The maximum balance of account number 2 was $40,000. The maximum aggregate balance, which is determined by adding together the maximum balance of both accounts, is $9155,000. The maximum aggregate balance for this person exceeded $50,000, so the person does not meet the criteria for Level 1 non-willful FBAR penalty mitigation. Assuming the person meets all four mitigation criteria, non-willful FBAR penalty mitigation is appropriate for both of the accounts.

For account number 1, Level 3 non-willful FBAR penalty mitigation applies because the maximum balance of the account is greater than $250,000. The Level 3 non-willful penalty is the statutory maximum, which is $10,000.

The maximum balance in account number 2 was $40,000. Since the maximum balance of this account did not exceed $250,000, the appropriate mitigation level is Level 2. Under the non-willful Level 2 FBAR penalty mitigation guidelines, the FBAR penalty is the lesser of $5,000 or ten percent of the maximum balance in the account. In our example, the penalty for account number 2 is $4,000, because ten percent of maximum balance of the account (ten percent of $40,000 is $4,000) is less than $5,000.

We computed the penalty for account number 1 using the Level 3 guidelines, and we computed the penalty for account number 2 using the Level 2 guidelines. Therefore, in this example, the total non-willful FBAR penalties using the mitigation guidelines is $14,000.



We will do another example of Level 3 non-willful penalty computations. The facts in this example are the same as the facts for the Level 4 willful FBAR penalty mitigation example that we previously covered.

The facts of the case are that for 2011 a person failed to report both of his foreign accounts. The maximum balance of account number 1 was $1,370,000, and the balance on June 30, 2012 was $1,260,000. The maximum balance of account number 2 was $1,760,000, and the person closed account number 2 on March 16, 2012. The maximum aggregate balance, which is determined by adding together the maximum balance of both accounts, is $3,130,000. The maximum aggregate balance for this person exceeded $50,000, so the person does not meet the criteria for Level 1 non-willful FBAR penalty mitigation. Assuming the person meets all four mitigation criteria, non-willful FBAR penalty mitigation is appropriate for both of the accounts.

For account number 1, the Level 3 non-willful FBAR penalty applies because the maximum balance of the account is greater than $250,000. The Level 3 non-willful penalty is the statutory maximum, which is $10,000.

For account number 2, the Level 3 non-willful FBAR penalty applies because the maximum balance of the account is greater than $250,000. The Level 3 non-willful penalty is the statutory maximum, which is $10,000.

The total non-willful FBAR penalties is $20,000.

Note that the non-willful FBAR penalty is not based upon the account balance, so the account balance on the due of the FBAR is not a relevant factor when computing the non-willful FBAR penalty.

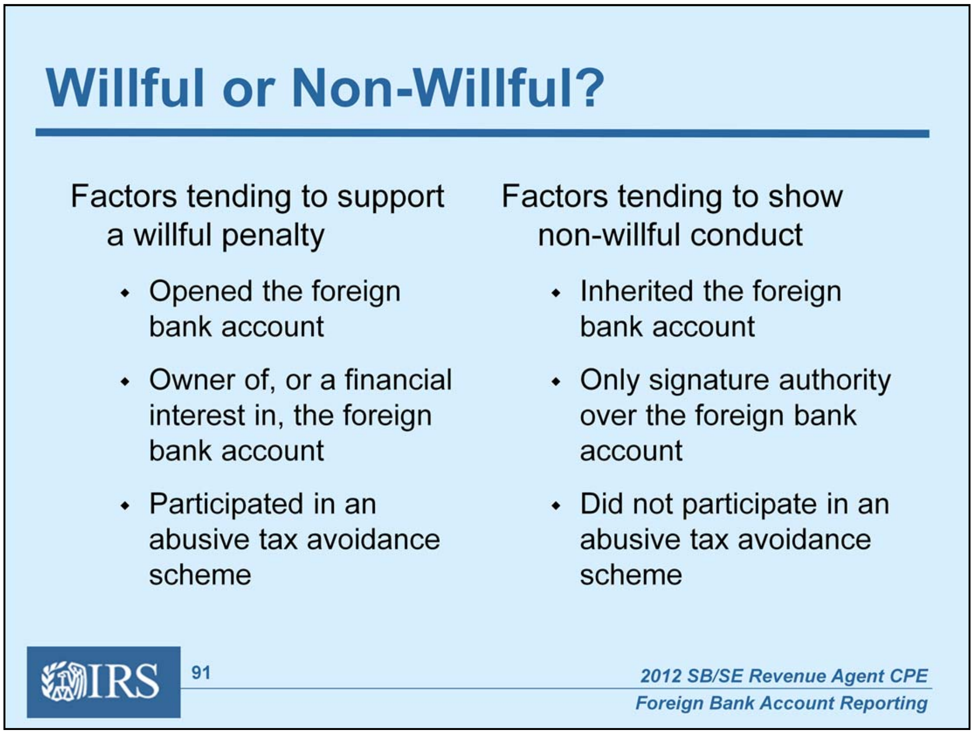
FBAR Mitigation & Reasonable Cause

- Use the non-willful FBAR penalty mitigation guidelines only where there is no reasonable cause
- Do not assert non-willful FBAR penalties if
  - You find reasonable cause for the violation, and
  - The person files correct FBARs

IRS 90

2012 SB/SE Revenue Agent CPE
Foreign Bank Account Reporting

The non-willful FBAR penalty mitigation guidelines apply only after you determine that the failure to file a correct FBAR is not due to reasonable cause. Do not assert non-willful FBAR penalties where you determine there to be reasonable cause and the person files correct FBARs.



We just covered the computations of willful and non-willful FBAR penalties. Next we will cover some of the factors that tend to show the FBAR violation is willful, as well as the factors that tend to show the FBAR violation is non-willful. Remember that willfulness requires both knowledge and intent. In many cases you will need to use circumstantial evidence to show knowledge and intent. The factors on this slide and the next few slides are presented as opposite sides on a sliding scale, and no single factor alone prove knowledge or intent.

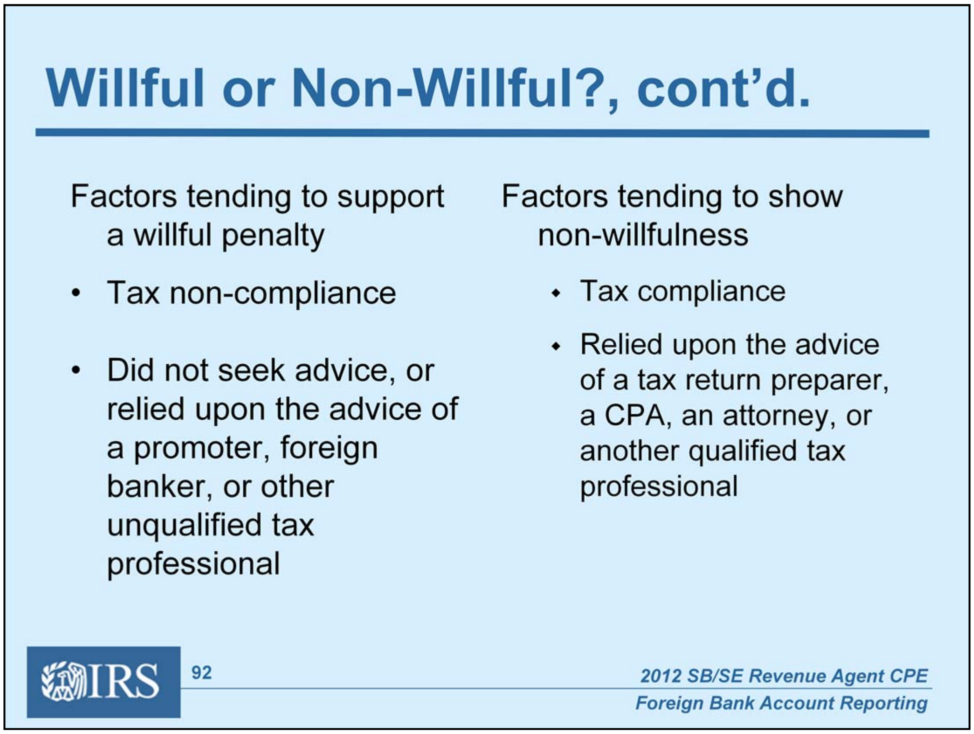
The factors that tend to support a willful penalty include:

> The person opened the foreign bank account.
>
> The person is the owner of, or has a financial interest in, the foreign bank account.
>
> The person participated in an abusive tax avoidance scheme.

The factors that tend to show non-willful conduct include:

> The person inherited the foreign bank account, or more generally did not open the account.
>
> The person has only signature authority over the foreign bank

account.
The person did not participate in an abusive tax avoidance scheme.

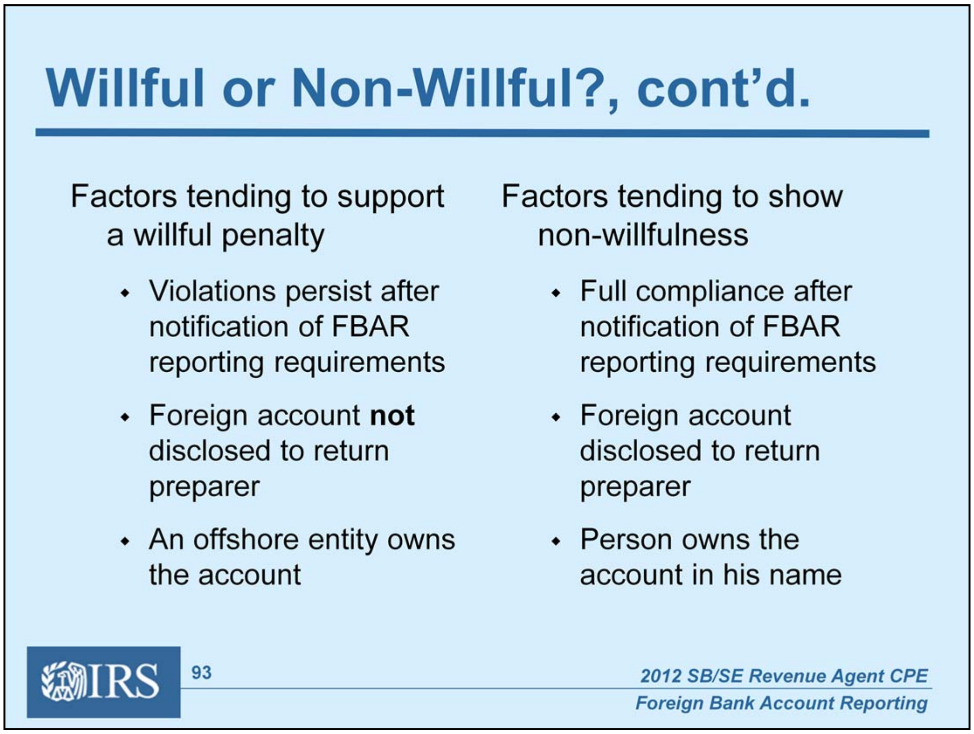


Other factors that tend to support a willful penalty include:

> The person used the foreign account for tax non-compliance, either tax evasion or illegal tax avoidance.
>
> The person did not seek advice, or relied upon the advice of a promoter, foreign banker, or other unqualified tax professional.

And other factors that tend to show non-willfulness include:

> The person is tax compliant with respect to the foreign account.
>
> The person relied upon the advice of a tax return preparer, a CPA, an attorney, or another qualified tax professional.

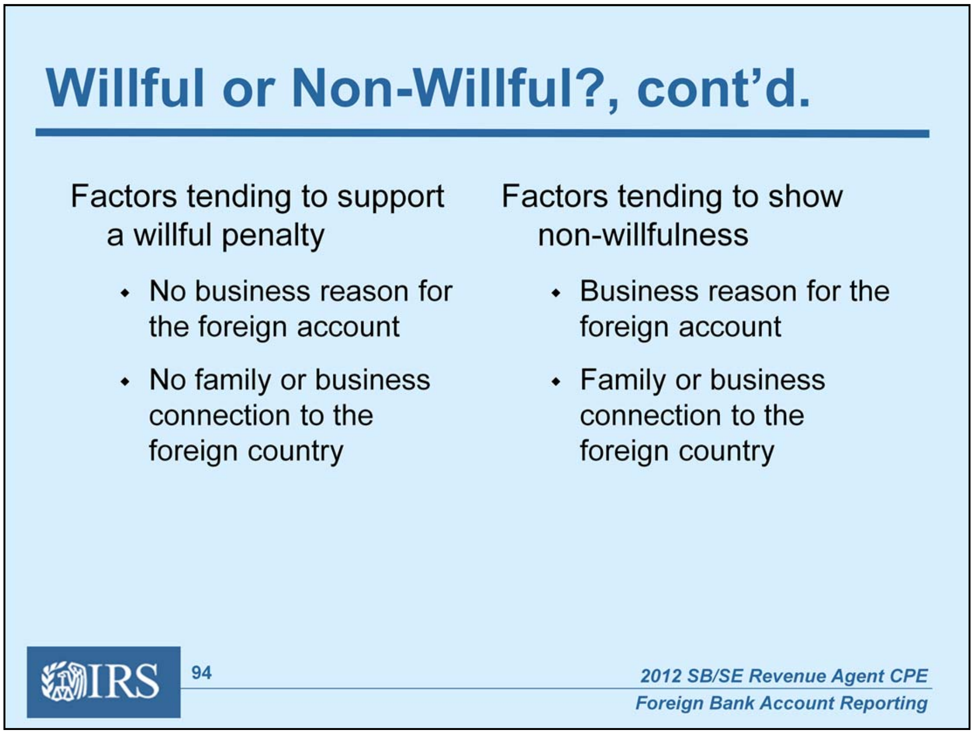


Still more factors that tend to support a willful penalty:

> FBAR violations persist after notification of FBAR reporting requirements.
>
> The person did not disclose the foreign account to his return preparer.
>
> The person further concealed the account by having an offshore entity own the account.

And still more factors that tend to show non-willfulness:

> The person files FBARs after being notified of his FBAR filing requirements.
>
> The person disclosed the foreign account disclosed to his return preparer.
>
> The person owns the foreign account in his own name.



A few more factors that tend to support a willful penalty are:

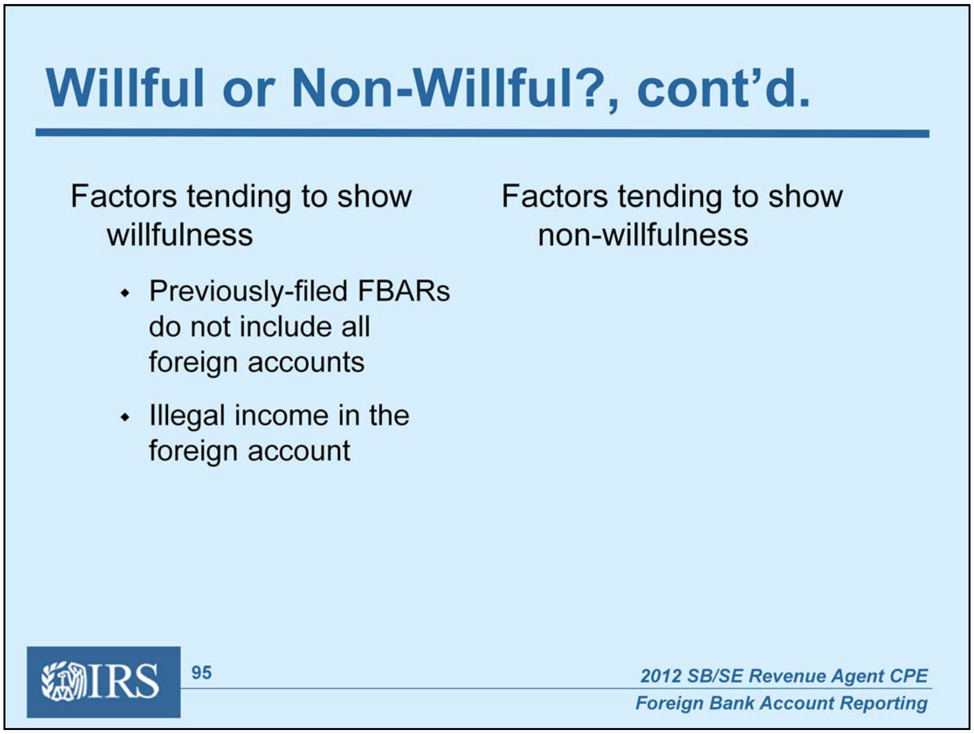
The person has no business reason for the existence of the foreign account.

The person has no family or business connections to the foreign country where the account is located.

And a few more factors tending to show non-willfulness are:

The person has a legitimate business reason for the foreign account.

The person has family or business connections to the foreign country where the account is located.

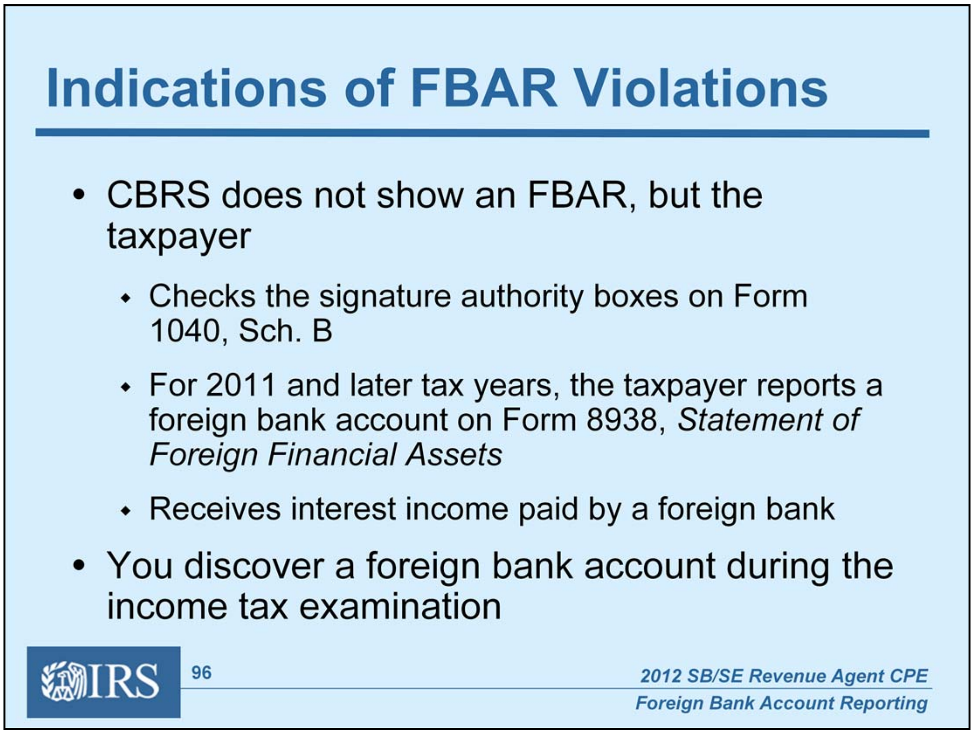


And more factors that tend to show willfulness:

Previously-filed FBARs do not include all of the person's foreign accounts.

Income from illegal sources is either in or passed through the foreign account.

Keep these factors in mind while you are evaluating the direction the FBAR penalty investigation. No single factor is more important than any other factor, and you need to weigh all relevant factors. Just because a factor tends to show willfulness does not mean if that factor is present you cannot assert a non-willful FBAR penalty. Only you can evaluate the weight of evidence to conclude which FBAR penalty, if any, is appropriate. Also keep in mind that where you find reasonable cause for the violation, do not assert FBAR penalties.



What are some of the ways you may be able to identify a potential FBAR violation during an examination? One example is where the taxpayer files Form 1040 and attaches Sch. B. On Sch. B there is a series of questions regarding foreign bank accounts. If the taxpayer checks the yes box for any of these questions, and CBRS does not show that the taxpayer filed an FBAR, you may have an FBAR violation.

For 2011 and later tax years, if the taxpayer attaches Form 8938, *Statement of Foreign Financial Assets*, to his income tax return, and CBRS does not show that the taxpayer filed an FBAR, you may have an FBAR violation.

Of course, while your doing the examination if you discover a foreign bank account, and CBRS does not show that the taxpayer filed an FBAR, you may have an FBAR violation.

Remember that CBRS is the database that contains all of the FBAR filings.

Once you have an indication of an FBAR violation, it is time to consider starting an FBAR penalty investigation.

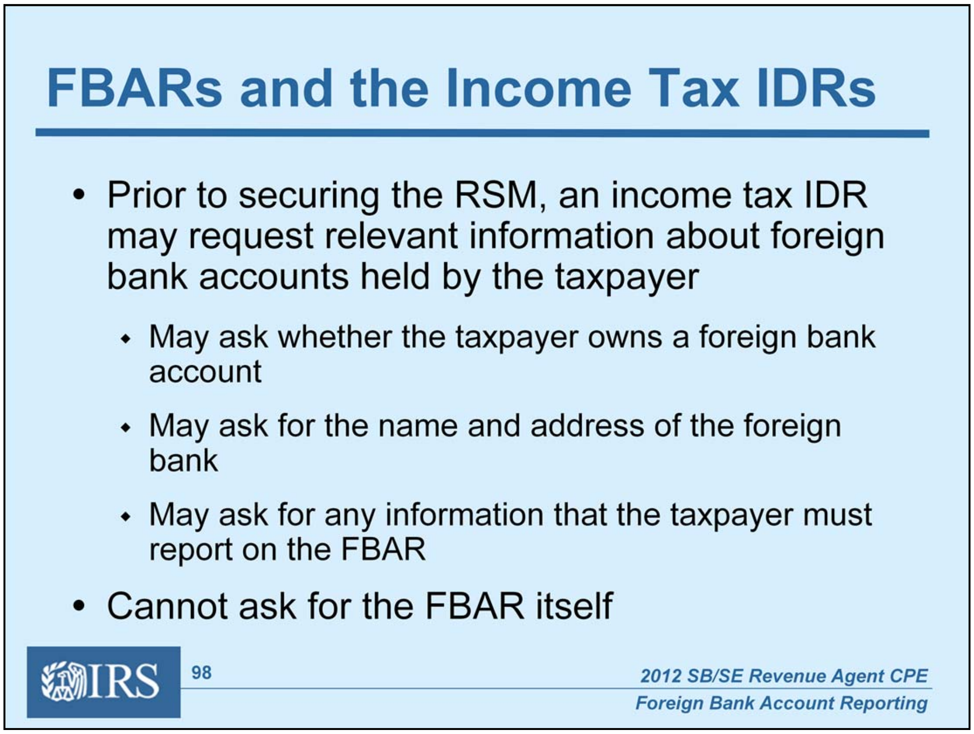
Prior to the Related Statute Memo

- The territory manager must approve the FBAR penalty case by signing a Related Statute Memorandum (RSM), Form 13535, *Foreign Bank and Financial Accounts Report Related Statute Memorandum*
- Prepare the RSM as soon as you discover the account
- Until the territory manager signs the RSM
  - Do not ask questions that relate only to the FBAR
  - Do not request information that relates only to the FBAR
  - Do not ask whether the taxpayer filed an FBAR
  - Do not ask for a copy of the FBAR
- See IRM 4.26.17.2

IRS 97 2012 SB/SE Revenue Agent CPE
Foreign Bank Account Reporting

Before beginning and FBAR penalty investigation you must obtain the approval of your territory manager using a Related Statute Memorandum (RSM), Form 13535, *Foreign Bank and Financial Accounts Report Related Statute Memorandum*. You should prepare the Related Statute Memorandum as soon as you discover an unreported foreign bank account.

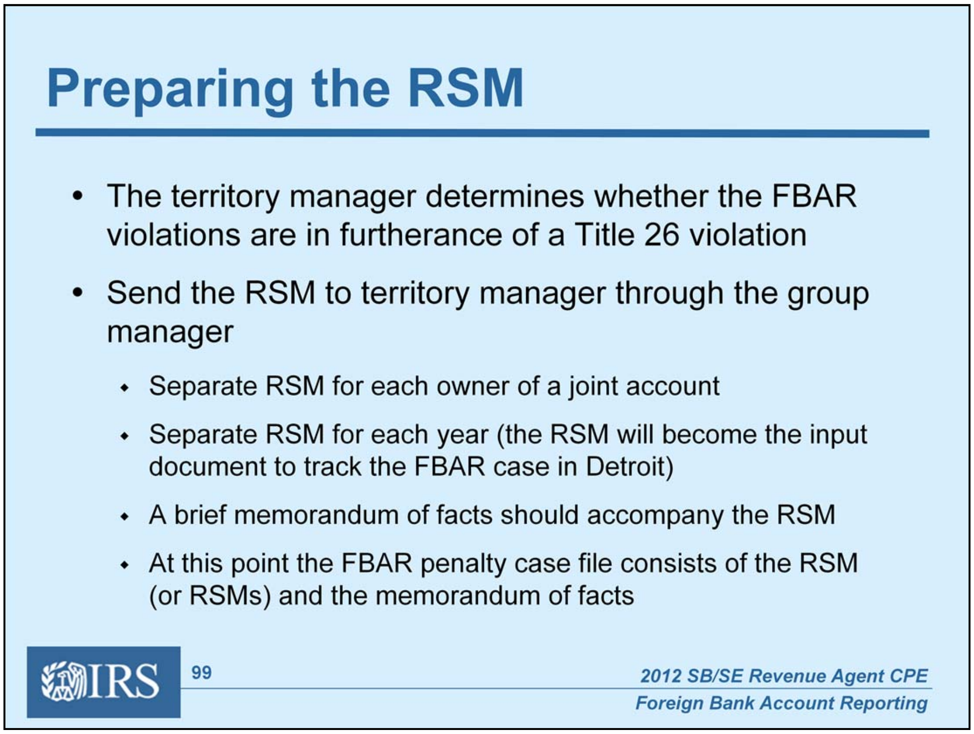
Until your territory manager approves the FBAR penalty case, you cannot ask any questions, or request any information or documentation that relates only to the FBAR. You also may not ask the taxpayer for a copy of the FBAR, or even whether he filed the FBAR. See IRM 4.26.17.2.



As we just stated, prior the securing a related statute memorandum from your territory manager you cannot ask any questions specifically related to the FBAR form; however, on an information document request for the income tax examination you may request information about foreign bank accounts if such information is relevant to the income tax examination.

Bank accounts, whether foreign or domestic, are relevant to many income tax examinations. On an IDR for an income tax examination, you may ask the taxpayer whether he has a foreign bank account. You may also ask for the name an address of the foreign bank, the name of the entity who owns the foreign bank account, and any other information that the taxpayer is required to keep that would be relevant to the income tax examination.

Remember, you cannot ask about the FBAR itself before your territory manager signs the related statute memorandum.



Now you are ready to prepare the Related Statute Memorandum so you can investigation potential FBAR violations. Your territory manager will determine whether the apparent FBAR violations are in furtherance of a Title 26 violation. Absent such a determination, the disclosure guidelines under Title 26 prevent you from using Title 26 information for Title 31 purposes. Since you discovered the potential FBAR violation during an income tax examination, you need the related statute determination to start an FBAR penalty investigation.

You send the related statute memorandum to your territory manager through your group manager. Prepare a separate RSM for each owner of a joint account. You also need a separate RSM for each year because the RSM will become the input document to track the FBAR case at the Detroit Computing Center. In most cases you should attach to the RSM a brief memorandum that outlines the facts the case so your territory manager can make an informed decision.

At this point the FBAR penalty case file consists of the RSM (or RSMs) and the memorandum of facts.

Territory Manager and the RSM

- Territory manager determines the FBAR violation was in furtherance of a Title 26 violation
  - Signs the RSM and checks the appropriate box
  - Returns the penalty case to the examiner
  - The examiner starts the FBAR penalty investigation
  - Title 26 information may be used in the FBAR penalty case
- Territory manager determines the FBAR violation was not in furtherance of a Title 26 violation
  - Signs the RSM and checks the appropriate box
  - Returns the penalty case to the examiner
  - The examiner includes the RSM in the Title 26 case
  - The FBAR penalty case is terminated

IRS 100 2012 SB/SE Revenue Agent CPE
Foreign Bank Account Reporting

If the territory manager determines the FBAR violation was in furtherance of a Title 26 violation, the territory manager signs the RSM and checks the appropriate box to indicate the decision and returns the penalty case file to you to start the FBAR penalty investigation. You may now use Title 26 information in the FBAR penalty case.

If the territory manager determines the FBAR violation was not in furtherance of a Title 26 violation, the territory manager signs the RSM and checks the appropriate box and returns the penalty file case to you. You include the RSM in the Title 26 case and you terminate the FBAR penalty case. This ends your FBAR responsibilities.

Starting the FBAR Penalty Case

- FAX the RSM to the Detroit Computing Center at (313) 234-2278
- The Detroit Computing Center inputs each case into an FBAR database to monitor FBAR penalty statutes
- Place the original RSM and the FAX transmission report in the FBAR penalty case
- FBAR cases are not on AIMS
- Follow local procedures to establish the FBAR case on ERCS

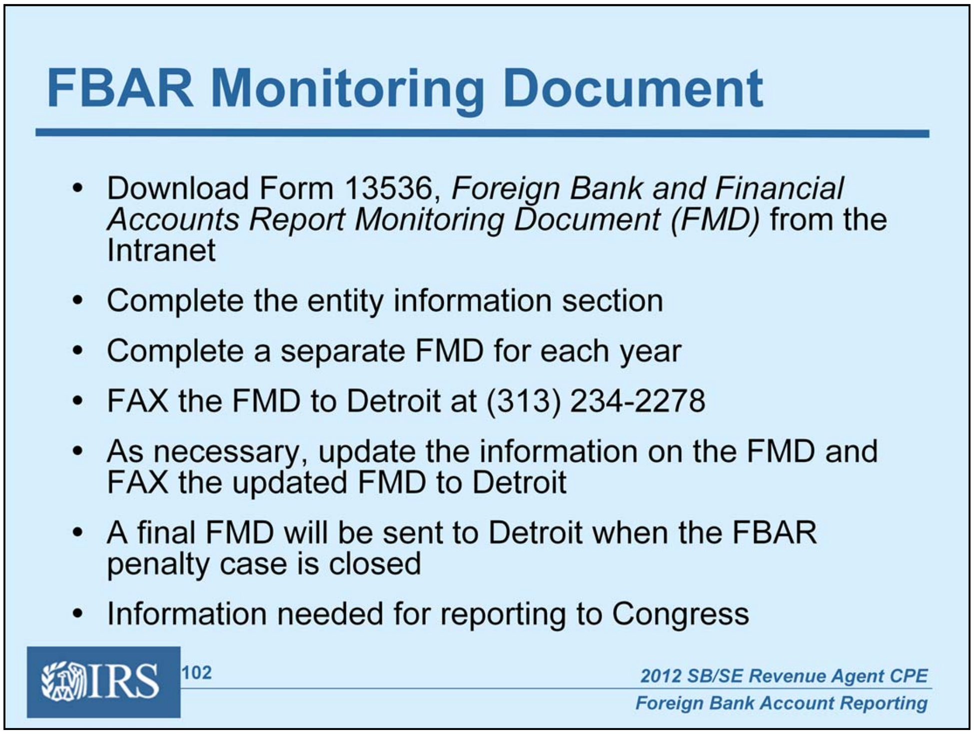
Once the territory manager makes a related statute determination, you need to fax the related statute memorandum to the Detroit Computing Center at (313) 234-2278.

The Detroit Computing Center inputs each case into an FBAR database and starts to monitor FBAR penalty assessment statutes.

Create a separate FBAR penalty case file and place the original RSM and the FAX transmission report in the FBAR penalty case file.

FBAR cases are not on AIMS.

Currently, not all Examination Areas establish FBAR cases on ERCS. If your area does establish FBAR cases on ERCS, follow local procedures to establish the FBAR penalty cases on ERCS.



Next, download Form 13536, *Foreign Bank and Financial Accounts Report Monitoring Document (FMD)* from the Forms and Publications website on the IRS Intranet.

Complete the entity information section of the form and fax the form to the Detroit at (313) 234-2278; as with the related statute memorandum, complete a separate FBAR monitoring document for each year. You may fax both the RSM and FMD at the same time.

As necessary, you will update the information on the FMD and fax the updated FMD to Detroit so the FBAR penalty case database has the most current information. At the conclusion of the FBAR penalty investigation you will send a final FMD to Detroit when you close the FBAR penalty case.

If you remember, near the beginning of this presentation we discussed Title 31 reporting requirements. Well, one of the reporting requirements was for the Secretary of the Treasury to report to Congress on FBAR compliance efforts. The FinCEN database is the source of information used to prepare these reports, so it is important that the database contains the most current information regarding the status of all FBAR penalty investigations.

FBAR Penalty Investigations

- The goal of the FBAR penalty investigation is to gathering evidence to arrive at a decision regarding the appropriate FBAR penalties
- Many investigations will result in non-willful penalties because the IRS cannot prove willfulness
- The evidence will guide the investigation:
  - If the evidence tends to show willful conduct by the person, continue to gather evidence to prove willfulness
  - If the evidence tends to show non-willfulness, then shift the focus of the investigation to reasonable cause

IRS 103 2012 SB/SE Revenue Agent CPE
Foreign Bank Account Reporting

Now you have an approved FBAR penalty investigation. What are you going to do?

The goal of the FBAR penalty investigation is to gather evidence to arrive a decision regarding the appropriate FBAR penalties. You need to avoid starting a penalty investigation with the intent of proving a that a specific penalty applies. At the start of the investigation you may have some evidence that tends to show willfulness, or some evidence that that tends to show non-willfulness; however, until you gather additional information you really do not know with any degree of certainty the appropriate penalty, if any, to assert.

Many FBAR penalty investigations will result in non-willful penalties, not because the person did not act willfully, but because we cannot prove that the person acted willfully.

You need to allow the evidence to guide the 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 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 investigation heavily depends upon the facts of the case.

The rest of this presentation deals with the administrative requirements for FBAR penalty case processing and FBAR penalty assessments.

Working the FBAR Penalty Case

- RGS FBAR penalty lead sheet
- FBAR case time
  - Penalty case on ERCS – charge time to the case
  - Penalty case not on ERCS – charge time to Activity Code 545
- Gather evidence to arrive at a conclusion regarding the appropriate penalty
- Prepare summary memorandum to explain FBAR violations

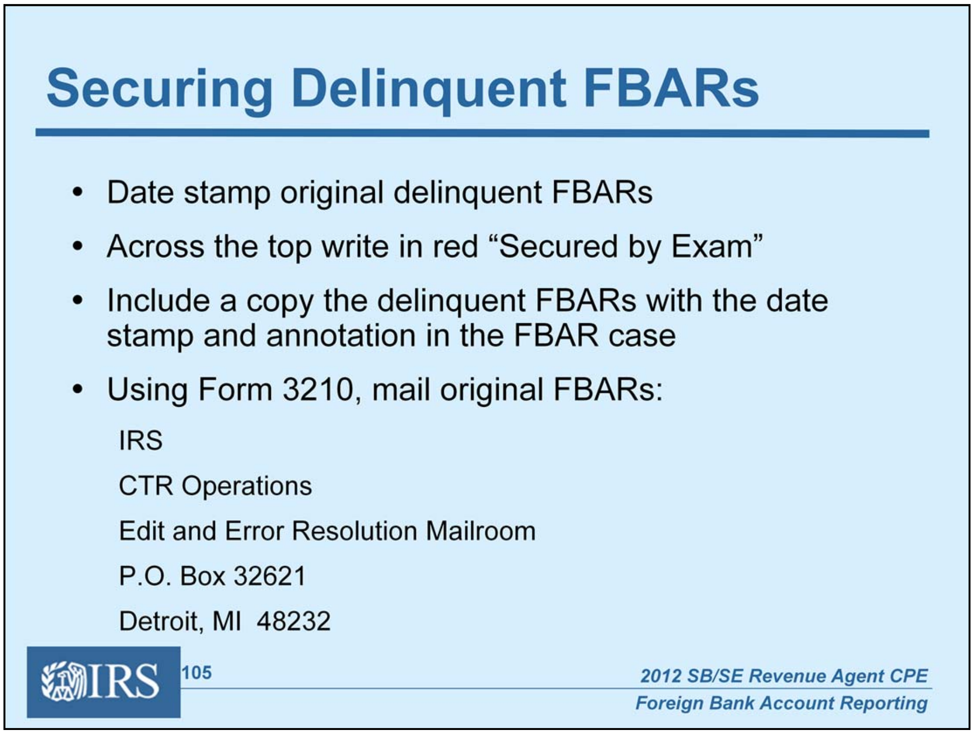
IRS 104 2012 SB/SE Revenue Agent CPE
Foreign Bank Account Reporting

RGS has an FBAR penalty lead sheet that contains the FBAR penalty case procedures. This lead sheet is a very helpful reminder of the steps that you need to take in an FBAR penalty investigation.

When working on the FBAR penalty investigation, if the local procedures establish the FBAR penalty case on ERCS, charge your time directly to the FBAR penalty case. Otherwise, charge the time that you work on the FBAR penalty case to Activity Code 545.

Be sure to place all evidence gathered during the FBAR penalty investigation in the FBAR penalty case file. The FBAR penalty case file is separate from the Title 26 case files. We will talk more about the FBAR penalty case file a little later in this presentation.

The FBAR penalty case will include a summary memorandum that you prepare to explain the FBAR violations and the proposed FBAR penalties, if any. We will cover the penalty memorandum later in this presentation.



You must process all delinquent FBARs that you receive. Date stamp the original FBAR and write across the top of the form in red ink, “Secured by Exam.”

Make a copy of the date-stamped and annotated FBAR and include the copy in the FBAR penalty case file.

Using Form 3210, mail the original delinquent FBARs to the Detroit Computing Center:

IRS
CTR Operations
Edit and Error Resolution Mailroom
P.O. Box 32621
Detroit, MI 48232

FBAR Power of Attorney

- May only use Form 2848 after the territory manager signs the related statute memorandum
- Form 2848, line 3:
  - Column 1: “FBAR Examination”
  - Column 2: “TD F 90-22.1”
  - Column 3: the relevant calendar years
- Date-stamp the original Form 2848 and retain it in the FBAR penalty case
- Update the power of attorney section of the FMD and fax it to the Detroit Computing center (313) 234-2278

IRS 106

2012 SB/SE Revenue Agent CPE
Foreign Bank Account Reporting

Form 2848 is a power of attorney form for Title 26 income tax cases. You may use Form 2848 for FBAR penalty cases only after the territory manager signs the related statute memorandum to allow you to start the FBAR penalty case.

You will need to secure a new power of attorney for the FBAR case. On line 3 of Form 2848, the representative must clarify that the power of attorney relates to FBAR penalties by writing “FBAR Examination” in column 1, writing “TD F 90-22.1” in column 2, and listing each relevant calendar year in column 3.

When you receive the FBAR power of attorney, date-stamp the original Form 2848 and retain it in the FBAR penalty case file. You also need to update the power of attorney section on the FBAR monitoring document, Form 13536. After updating the FMD, fax it to the Detroit Computing Center at (313) 234-2278 for input into the database.

FBAR Penalty Assessment Statute

- The due date of the FBAR is June 30 of the following year, so the penalty assessment statute is 6 years from this date
- The statute remains the same regardless of whether the taxpayer files the FBAR or not
- Special FBAR statute extension; contact Counsel for the current version of the form
- Paragraph 35 of IRS Delegation Order 25-13 (April 11, 2012) delegates to group managers the authority to sign FBAR statute extensions
- Form 872 does not extend the FBAR statute

IRS 107

2012 SB/SE Revenue Agent CPE
Foreign Bank Account Reporting

Recall from our previous discussion that the FBAR for a calendar year is due June 30 of the following year. The FBAR penalty assessment statute is six years from the due date of the FBAR.

The six-year statute is the same regardless of whether the taxpayer filed the FBAR on time, filed late, or did not file the FBAR.

The taxpayer may extend the FBAR penalty assessment statute by signing a special FBAR statute extension. Currently there is no published form to extend FBAR penalty assessment statutes. Contact Counsel to secure a copy of the current FBAR statute extension document.

Paragraph 35 of IRS Delegation Order 25-13 (April 11, 2012) delegates to group managers the authority to sign FBAR penalty statute extensions.

Form 872, which is used to extend assessment statutes in Title 26 cases, does not extend the FBAR penalty assessment statute.

The FBAR Penalty Case File

- Separate from the income tax cases
- Signed Related Statute Memorandum
- FBAR Monitoring Document
- Fax transmittal for first FMD sent to Detroit
- Original Power of Attorney for FBAR penalties
- Copies of delinquent FBARs
- FBAR workpapers, including activity record and FBAR lead sheet
- FBAR penalty summary memorandum

IRS 108

2012 SB/SE Revenue Agent CPE
Foreign Bank Account Reporting

The FBAR penalty case file is a separate file, and contains the following documents:

The Related Statute Memorandum signed by your territory manager.

The most up-to-date versions of the FBAR Monitoring Document.

The Fax transmittal to show the date you sent the first FBAR Monitoring Document to Detroit.

The original Power of Attorney for the FBAR penalties, if any.

Copies of delinquent FBARs that you secured during the penalty investigation.

Your FBAR workpapers, including the activity record and the FBAR lead sheet.

The FBAR summary memorandum, either to explain the FBAR penalties, or to explain the reasons for not asserting FBAR penalties.

The FBAR Penalty Case File, cont'd.

- Counsel memorandum approving FBAR penalties
- FBAR penalty documents, as applicable
  - FBAR warning letter, Letter 3800
  - Penalty assessment agreement, Form 13449
  - Copy of check to pay FBAR penalties (original sent to Detroit for processing)
  - Letter 3709 and appeal request (unagreed cases)

IRS 109

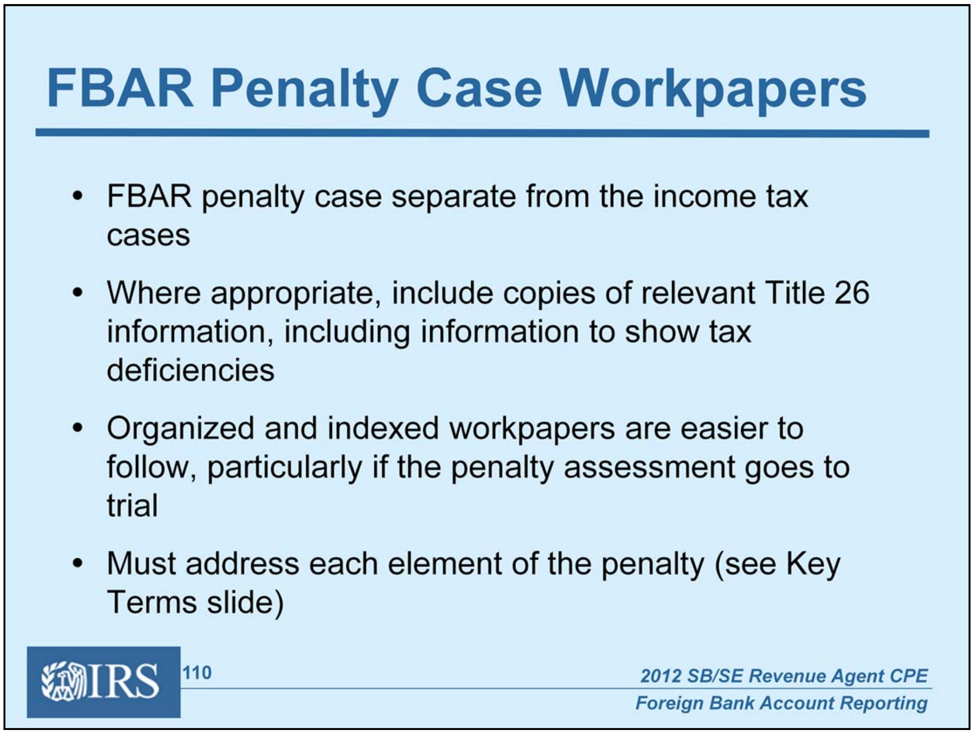
2012 SB/SE Revenue Agent CPE
Foreign Bank Account Reporting

The FBAR penalty case file also contains one or more of the following documents, depending upon the outcome of the case.

For cases where you will assert an FBAR penalty, the file will have the memorandum from Counsel approving FBAR penalties. We will discuss the role of Counsel in FBAR penalty cases shortly.

The file may also contain other various FBAR penalty documents, depending upon the disposition of the case. The other documents could include:

> For no penalty assessment cases the FBAR warning letter, Letter 3800;
>
> For an agreed penalty case, the FBAR penalty assessment agreement, Form 13449, and a copy of the check to pay the FBAR penalty assessments (you send the original check to Detroit to be processed);
>
> For no agreement and unagreed appealed FBAR cases, Letter 3709 and the taxpayer's request to appeal the FBAR penalties.



The FBAR penalty case file is separate from the related income tax examinations or Title 26 penalty cases. The FBAR penalty case and the income tax cases may follow separate processing paths so it is important to include in the FBAR penalty case copies of all the relevant information from the Title 26 case files, including information to show the amounts of the tax deficiencies.

As with all cases, well organized and indexed workpapers are easier to follow. Also keep in mind that, if the FBAR penalty case goes to trial, your FBAR workpapers will be a very important part of the government's FBAR penalty case.

The workpapers must address each element of the FBAR reporting requirements to prove the person had an FBAR filing requirement. We previously listed these on a slide titled Key Terms. You may find it useful to organize your workpapers according to these elements.

FBAR Penalty Summary Memorandum

- Counsel reviews all FBAR penalty proposals to determine whether the evidence supports the penalty the proposed penalty
- Prepare a memorandum for Counsel to summarize the evidence that support the proposed FBAR penalty (bullet or narrative form)
- For unagreed FBAR penalty cases, Appeals also will refer to this memorandum
- For cases where the person contests the FBAR penalty assessment, may be used in the court proceedings

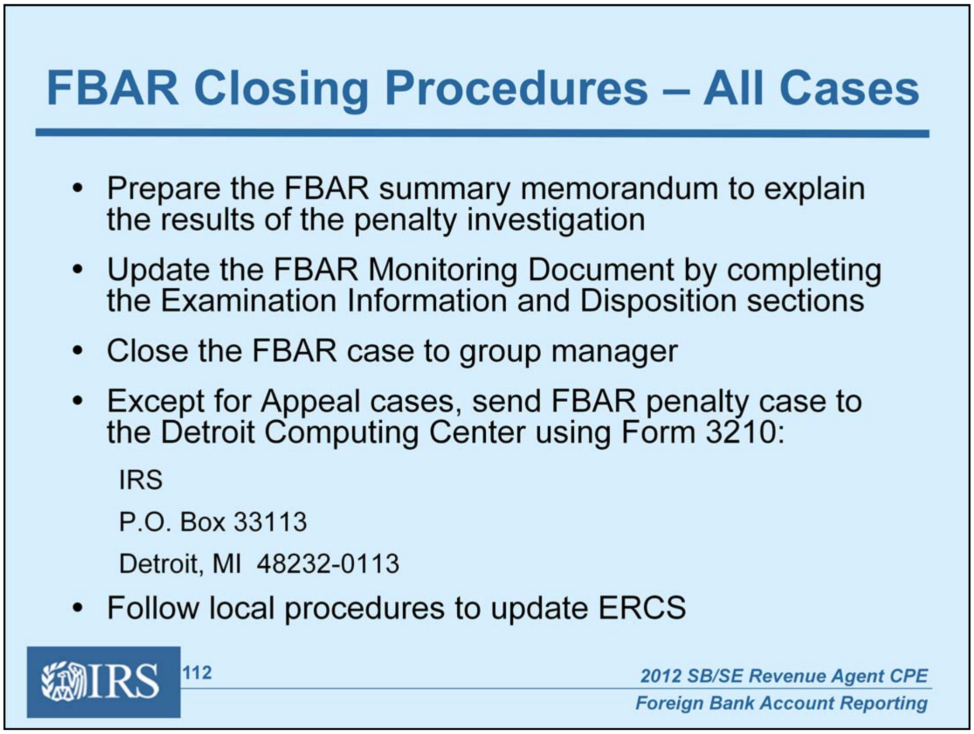
IRS 111 2012 SB/SE Revenue Agent CPE
Foreign Bank Account Reporting

At the conclusion of your FBAR penalty investigation, if you propose an FBAR penalty, either the willful penalty or the non-willful penalty, Counsel needs to review to your proposed FBAR penalties to determine whether the evidence you gathered is sufficient to sustain the penalties.

To assist Counsel in this task you prepare a memorandum to summarize the evidence that supports the penalty assessment. This memorandum can be in either bullet or narrative form, or a combination of the two forms. Often it is often better to summarize the evidence using bullets, and then to use a narrative to explain how the evidence supports the proposed penalty assessments.

For unagreed FBAR cases where the person protests the penalties, the FBAR penalty memorandum will provide Appeals with a summary of the penalty case.

In the event the IRS assesses the FBAR penalties, and the person contests the assessments, the FBAR penalty memorandum will assist with preparing the case for trial.



There are a few general case closing procedures that apply to all FBAR cases. The slide lists these general procedures.

Prepare the FBAR summary memorandum to explain the results of the penalty investigation.

Complete the Examination Information and Disposition sections of the FBAR Monitoring Document and update the other sections as necessary.

Close the FBAR penalty case file to your group manager.

Except for appealed cases, using Form 3210, the group manager sends the FBAR penalty case file to the Detroit Computing Center:

IRS
P.O. Box 33113
Detroit, MI 48232-0113

In those areas that establish the FBAR penalty case on ERCS, follow local procedures to update the status of the case on ERCS.

FBAR Procedures – No Violation

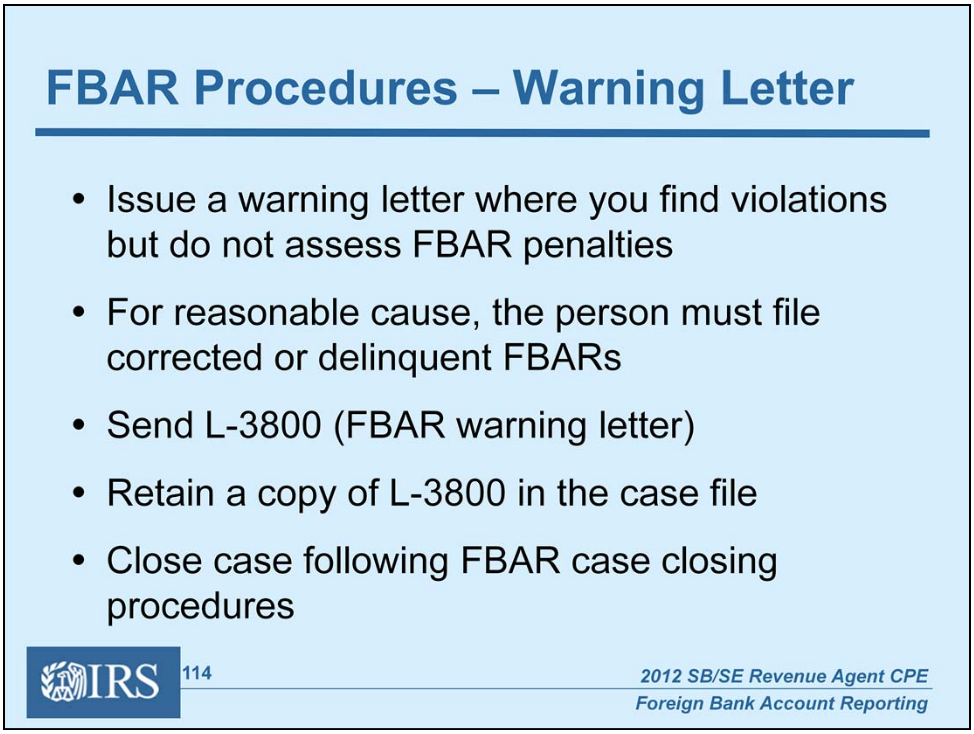
- Appropriate where there were no FBAR violations
- Close case following FBAR case closing procedures
- Follow the FBAR Warning Letter closing procedures for were there are FBAR violations but no FBAR penalties

113

2012 SB/SE Revenue Agent CPE
Foreign Bank Account Reporting

To close a case where you found no FBAR violations, assemble the FBAR case file and close the case following the FBAR case closing procedures we just discussed.

For cases where you found FBAR violations but did not assert penalties you should send an FBAR Warning letter to the taxpayer.

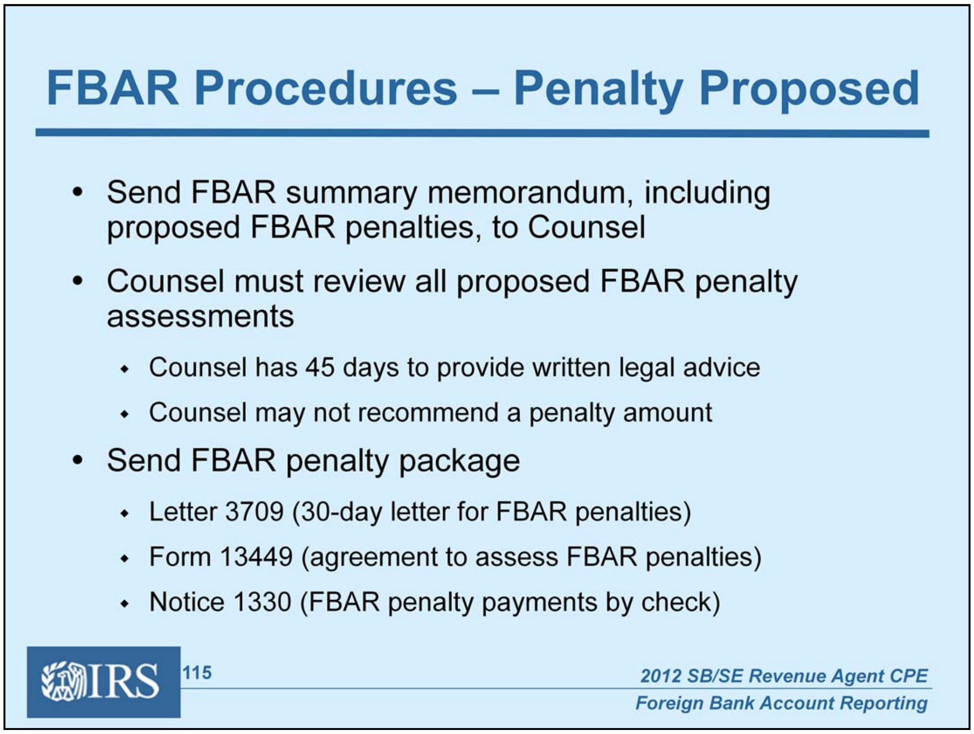


You should send an FBAR warning letter in all cases where you find FBAR violations but you and your group manager determine that penalties are not warranted.

If you determine that there was reasonable cause for the FBAR violations, by statute the person also must file corrected or delinquent FBARs to avoid a penalty. If the person does not file corrected FBARs, then you need to assert non-willful FBAR penalties because the person has not complied with the statute.

Send Letter 3800, *Warning Letter Respecting Foreign Bank and Financial Accounts report Apparent Violations*, to the taxpayer. This letter lists the FBAR violations that you discovered during the penalty investigation.

Retain a copy of the Letter 3800 in the case file. Assemble the FBAR case file and close the case following the FBAR case closing procedures we previously discussed.



Remember that Counsel must approve all proposed FBAR penalty assessments. After you and your group manager determine the appropriate amount of the FBAR penalty to assess, you send the FBAR penalty summary memorandum to Counsel for review.

Counsel has 45 days to provide written legal advice regarding the proposed FBAR penalty assessments. The role of Counsel is to review the evidence to determine whether you have proven there is an FBAR violation and whether the evidence that you gathered supports the proposed FBAR penalty; Counsel may not recommend a specific penalty amount.

Once Counsel approves the proposed FBAR penalty, you are ready to send the FBAR penalty package to the taxpayer. The FBAR penalty package consists of:

- Letter 3709, *FBAR Penalty Letter*
- Form 13449, *Agreement to Assessment and Collection of Penalties Under 31 U.S.C. 5321(a)(5) and 5321(a)(6)*
- Notice 1330, *Information on Making FBAR Penalty Payment by Check*

FBAR Procedures – Agreed Case

- Taxpayer signs Form 13449 to agree to the FBAR penalty assessments
- Separate check for the FBAR penalties
- Follow the special processing procedures for checks to pay FBAR penalties
- Do not process the FBAR payments on Form 3244-A
- Close case following FBAR case closing procedures
- The Detroit Computing Center will assess the FBAR penalties, send the notice of the assessment, and forward the case for collection (if unpaid)

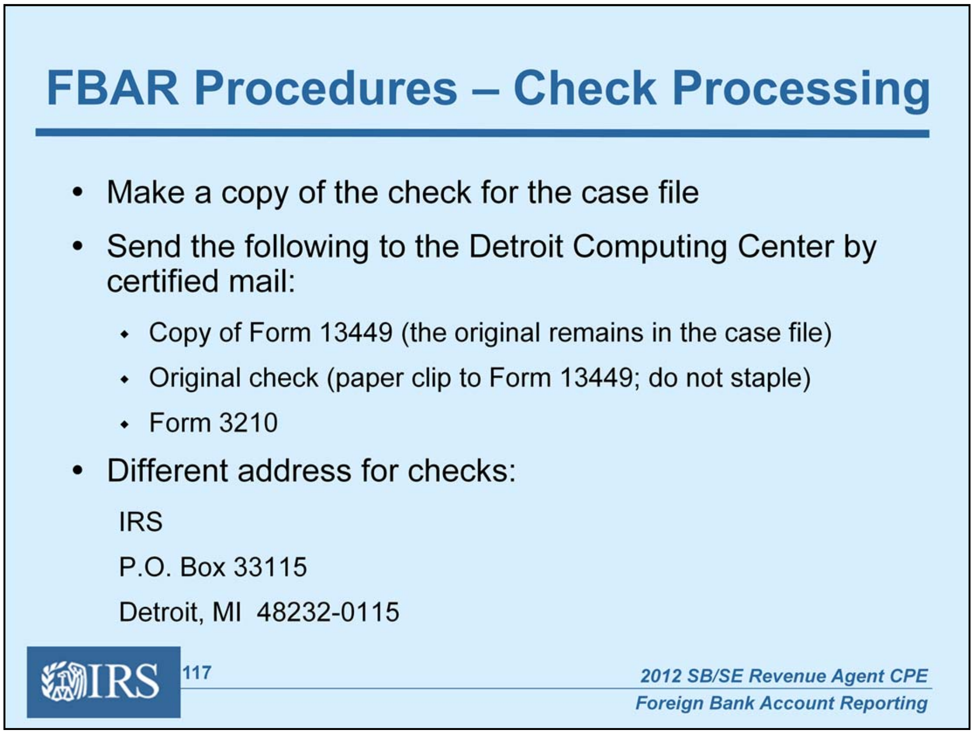
IRS 116 2012 SB/SE Revenue Agent CPE
Foreign Bank Account Reporting

To agree with the FBAR penalty assessments the taxpayer signs Form 13449 and returns it to you, preferably with payment. The taxpayer has to send a separate check to pay the FBAR penalties because there are special check processing procedures. The Detroit Computing Center will process the FBAR penalty check, so it is important that you do not process the check using the regular IRS processing procedures because the FBAR penalty assessment will not be on Master File.

Do not use Form 3244-A to process FBAR penalty checks.

After you process the check for the FBAR payment, assemble the FBAR case file and close the case following the FBAR case closing procedures we previously discussed.

The Detroit Computing Center will assess the FBAR penalties, send the notice of the assessment to the taxpayer, and, if necessary, forward the case for collection.



To process an FBAR penalty check, make a copy of the original check and retain the copy of the check in the FBAR penalty case file.

Send the following documents to the Detroit Computing Center by certified mail:

- a copy of the signed Form 13449; retain the original Form 13449 in the FBAR penalty case file.
- The original check, paper-clipped to the copy of Form 13449; do not staple the check to the form.
- Form 3210 to track receipt of the package.

There is a special address for checks. The address is IRS, P.O. Box 33115, Detroit, MI 48232-0115.

FBAR Procedures – Appealed Cases

- Taxpayer must file a protest within 30 days of Letter 3709 (retain the case for 15 days past the 30-day due date)
- Appeals requires 180 days on assessment statute
- Copy the FMD and send it to address for closed cases
- Follow case closing procedures, except the group closes the case directly to Appeals **not** to Detroit
  - FBAR cases are coordinated issue cases in Appeals
  - On transmittal letter, indicate the case is an FBAR case
  - Enter UIL 9999.99.01 on the transmittal letter

IRS 118 *2012 SB/SE Revenue Agent CPE*
Foreign Bank Account Reporting

To appeal the FBAR penalties, the taxpayer must file a protest within 30 days of Letter 3709. You should wait an additional 15 days past the deadline to respond to Letter 3709 to see whether you receive a protest from the taxpayer.

Appeals requires at least 180 days remaining on earliest FBAR penalty assessment statute. The taxpayer must sign the FBAR penalty statute extension, otherwise the taxpayer cannot appeal the FBAR penalty.

After updating the FBAR monitoring document, the group manager sends a copy to the Detroit Computing Center to the same address as for closed FBAR penalty cases.

Follow the regular case closing procedure to assemble the FBAR penalty case file for closing and, if necessary, to close the FBAR penalty case from ERCS. Your group manager will send the appealed FBAR penalty case file directly to Appeals following local procedures. Do not send appealed FBAR penalty cases to Detroit.

FBAR cases are coordinated issue cases in Appeals, so the transmittal letter must identify the case an FBAR penalty case. Your group manager needs to enter UIL 9999.99.01 on the transmittal letter so the Appeals officer knows to contact the Appeals FBAR Coordinator prior to starting the case.

FBAR Procedures – Unagreed Case

- Unagreed FBAR cases:
  - Taxpayer fails to respond to L-3709 within 45 days
  - Less than 180 days on the assessment statute and the taxpayer will not sign an FBAR penalty statute extension
- Follow the regular case processing procedures to close the FBAR penalty case to the Detroit Computing Center
- Detroit assesses the penalty, sends notice of assessment, and forwards the case for collection

IRS 119

2012 SB/SE Revenue Agent CPE
Foreign Bank Account Reporting

Unagreed FBAR penalty cases are cases either where the taxpayer fails to respond the Letter 3709 within 45 days, or where the taxpayer appealed the penalty but there is less than 180 days on the assessment statute and the taxpayer refuses to extend the FBAR penalty assessment statute.

You close unagreed FBAR cases using the case processing procedures we previously discussed. The group manager will send the unagreed case to the Detroit Computing Center. Detroit will assess the FBAR penalty, send the notice of assessment to the taxpayer, and then will refer the case for collection.

The taxpayer will not have pre-assessment appeal rights unless he signs an FBAR statute extension to allow Appeals to consider the case.

IRS FBAR Resources

- IRM 4.26.16 (Rev. 07-01-2008), *Report of Foreign Bank and Financial Accounts (FBAR)*
- IRM 4.26.17 (Rev. 05-05-2008), *Report of Foreign Bank and Financial Accounts (FBAR) Procedures*
- RGS FBAR Penalty lead sheet (Rev. 03-2012)
- FBAR Counsel

IRS 120

2012 SB/SE Revenue Agent CPE
Foreign Bank Account Reporting

There are many resources available within the IRS to assist you with FBAR questions.

IRM 4.26.16 (07-01-2008 revision), *Report of Foreign Bank and Financial Accounts (FBAR)*, contains a summary of the FBAR law as well as the criteria to assert FBAR penalties.

IRM 4.26.17 (05-05-2008 revision), *Report of Foreign Bank and Financial Accounts (FBAR) Procedures*, has the procedures to conduct Title 31 examinations.

The FBAR penalty lead sheet in RGS is a good reference that summarizes much of the information that is in the Internal Revenue Manual. The current RGS FBAR Penalty lead sheet is the March 2012 revision.

Chief Counsel has attorneys assigned to each Examination Area that specialize in FBAR reporting and penalty issues.

SB/SE FBAR Resources

- Subject matter experts in most SB/SE Examination areas

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121

2012 SB/SE Revenue Agent CPE
Foreign Bank Account Reporting

Most of the SB/SE Examination areas have local subject-matter experts that are available to assist you with questions regarding FBAR examinations.

SB/SE also as three senior program analysts within the Abusive Transactions and Technical Issues function, ATTI for short, who specialize in offshore issues, including FBAR penalty investigations:

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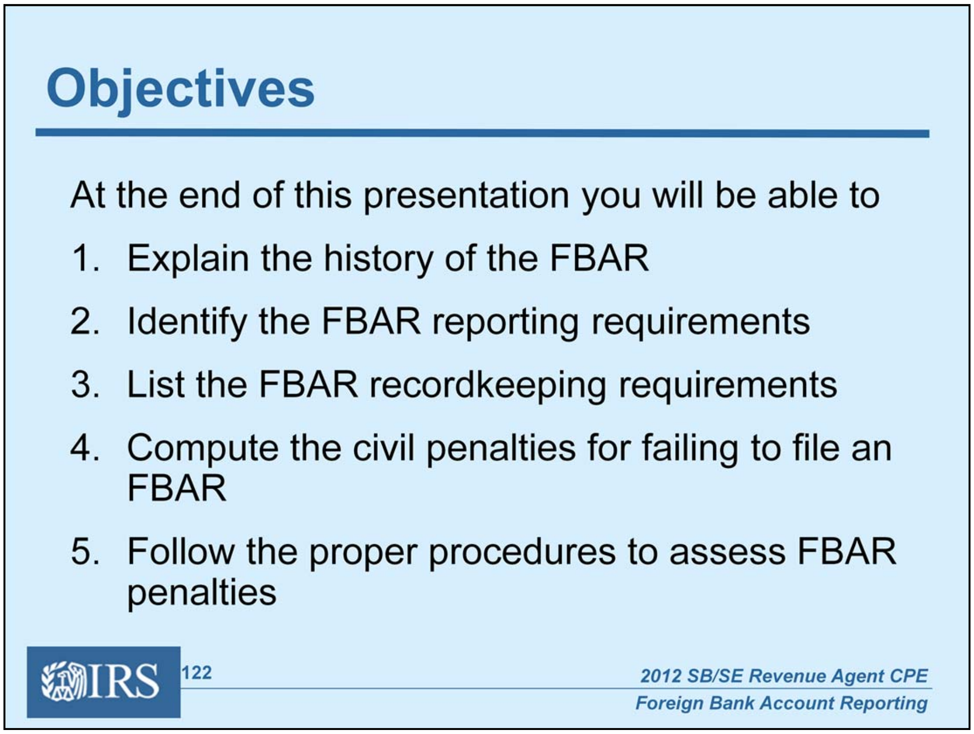

Now let's review the objectives of this presentation:

We explained the history of the FBAR and that the Financial Crimes Enforcement Network delegated FBAR enforcement authority to the IRS in 2003.

We identified the FBAR reporting requirements in the Treasury Regulations at 31 C.F.R. 1010.350.

We listed the FBAR recordkeeping requirements for U.S. Persons, which are also found in the FBAR regulations.

We computed the civil penalties for failing to file an FBAR using the FBAR penalty mitigation guidelines in the IRM.

We discussed the procedures to assess FBAR penalties, to issue FBAR warning letters, and to close FBAR penalty cases.

This is the end of the FBAR presenation. Thank you for your time.