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Internal
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PURPOSE

- (1) This transmits revised IRM 4.26.17, Report of Foreign Bank and Financial Accounts (FBAR) Procedures.

BACKGROUND

- (1) This IRM contains procedures for cases relating to the Report of Foreign Bank and Financial Accounts.
- (2) This section should be read together with Section 4.26.16, Report of Foreign Bank and Financial Accounts (FBAR) Law, for a complete understanding of FBAR law and procedures.

NATURE OF CHANGES

- (1) IRM 4.26.17.3.1 and IRM 4.26.17.4.3 are updated to reflect removal of references to an IP address and insertion of a valid intranet web address.
- (2) New IRM 4.26.17.4.8, Delinquent FBAR Processing, has been added, changing delinquent forms processing procedures.
- (3) References to retention of the original delinquent FBAR in the case file have been deleted from several sections.
- (4) Additional instructions were added to 4.26.17.5.4.1 (8) regarding completion of the Form 2797.
- (5) IRM 4.26.17.2.2 (2) and (3) were revised to eliminate an incorrect telephone number and obsolete procedures.
- (6) Technical corrections were made to the wording of IRM 4.26.17.5.4 and 4.26.17.5.5.

EFFECT ON OTHER DOCUMENTS

This material supersedes IRM 4.26.17, dated 01-01-2007.

AUDIENCE

Intended audience is IRS examiners in the Small Business/Self Employed (SB/SE) division who are responsible for ensuring compliance with the reporting and record keeping requirements of the Report of Foreign Bank and Financial Accounts. It can be referenced by all field compliance personnel, especially in Examination and Collection.

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4.26.17

Report of Foreign Bank and Financial Accounts (FBAR) Procedures

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4.26.17.1

(05-05-2008)

FBAR Procedures Overview

- (1) The Report of Foreign Bank and Financial Accounts (FBAR) requires procedures that are very different from both other Bank Secrecy Act (BSA) cases and tax cases, although FBAR violations are often found in these other cases.
- (2) A separate FBAR file must always be set up if there appears to be an FBAR violation, regardless of whether or not a penalty is asserted.
- (3) If the examiner notes that a Foreign Bank and Financial Accounts Report TD-F 90-22.1 (FBAR) apparently should have been filed during a tax, Form 8300 or BSA examination, the examiner will determine:
 - a. Whether the FBAR was required; and if so
 - b. Whether the FBAR was filed; and if so
 - c. Whether the records required by the FBAR instructions and 31 C.F.R. 103.32 were retained.
- (4) FBAR law and examination requirements are detailed in IRM 4.26.16. This section (IRM 4.26.17) provides the procedures to apply to an FBAR examination.
- (5) When an FBAR issue arises in the course of an Offshore Voluntary Compliance Initiative (OVCI) or Last Chance Compliance Initiative (LCCI) or other special initiative, the examiner should use the FBAR procedures for those initiatives.

4.26.17.2

(01-01-2007)

FBAR Procedures Starting the Case - Related Statute Memorandum

- (1) Information relevant to a Title 26 (Internal Revenue Code) case that is also relevant to an FBAR case may be obtained during a tax examination or a Form 8300 examination.
 - a. For example, bank account information is a necessary part of an income probe, and may reveal the existence of a foreign account requiring the filing of an FBAR.
 - b. The examiner should not ask interview questions or request documents that are only relevant to the FBAR examination without first obtaining a related statute memorandum signed by the examiner's Territory Manager.
 - c. Neither interviews nor Information Document Requests (IDRs) in a Title 26 case should request documents only needed for the FBAR examination, such as the FBAR itself, prior to a related statute determination signed by the examiner's Territory Manager.
 - d. If the source of the FBAR information is a Title 26 examination, including a Form 8300 examination, the information acquired is return information protected by IRC Section 6103. The examiner must obtain a related statute determination, signed by a Territory Manager before using the return information in an FBAR case.
 - e. A related statute determination is a good faith determination with respect to the present case, that the apparent FBAR violation was in furtherance of an apparent Title 26 violation.
 - f. A related statute determination is necessary to allow the examiner to use the information obtained from a Title 26 examination in the FBAR examination.
 - g. Without a related statute determination, Title 26 information cannot be used in the Title 31 FBAR examination. Any such use could subject the persons making the disclosure to penalties for violating the disclosure provisions protecting Title 26 return information.

- h. The Related Statute Memorandum (RSM) also serves as an input document for the FBAR database maintained at the Detroit Computing Center.
- (2) For an in depth discussion of the related statute determination, its basis in IRC Section 6103, the factors in making the determination, and its effect, see IRM 4.26.14, Disclosure.
- 4.26.17.2.1
(01-01-2007)
Obtaining Related Statute Determination**
- (1) In obtaining a related statute determination, the examiner will prepare the Foreign Bank and Financial Accounts Report Related Statute Memorandum - Form 13535 (RSM).
- a. The RSM should be completed in full after discussion with the group manager.
 - b. Each year requires a separate RSM to facilitate tracking of the statute of limitations.
 - c. A separate RSM is required for each person required to file an FBAR, even if a joint tax return has been filed.
 - d. The RSM is used as the initial input document for the monitoring of FBAR cases. All the information required in the RSM will be used to track the FBAR case and provide information to the Department of the Treasury and Congress in required annual reports.
- (2) The examiner will forward the FBAR file with the RSM through the group manager, who will initial to indicate concurrence and forward to the examiner's Territory Manager.
- (3) The Territory Manager will:
- a. Determine whether the apparent FBAR violations are in furtherance of an apparent Title 26 violation and sign the determination portion of the related statute memorandum. The Territory Manager does not have to be certain that there was an FBAR violation and that the violation was made in furtherance of a Title 26 violation. The Territory Manager can make a determination based on apparent violations, but this determination must be made in good faith.
 - b. Return the file with the related statute determination through the examiner's group manager to the examiner.
- 4.26.17.2.2
(05-05-2008)
Procedures Following The Related Statute Determination**
- (1) Following the Related Statute determination, if the Territory Manager has determined that the apparent FBAR violations are not in furtherance of an apparent violation of Title 26, the examiner places the RSM determination in the Title 26 case file. This terminates the examiner's FBAR responsibilities. The examiner will not conduct an FBAR examination.
- (2) If the Territory Manager has determined that the apparent violations in the FBAR case are in furtherance of an apparent violation of Title 26 in the tax case, the evidence acquired in the Title 26 case can be used in the FBAR case and the FBAR case can begin. If the FBAR case is opened, the examiner will fax the RSM determination to the Detroit Computing Center (DCC) at Fax 313-234-2278. The original RSM determination and the Fax Transmission Report are retained in the case file.
- (3) DCC will enter the RSM information into the FBAR database which starts the monitoring of the FBAR case for statute purposes.

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- (4) The examiner will download the FMD, Form 13536 , from the IRS Forms and Publications intranet web site and complete the entity information.
- (5) The examiner will set up the FBAR case file, place the original RSM in the case file and proceed with the FBAR examination. The examiner will update the FMD as needed and forward the updated FMD to DCC to keep the database up to date. The FMD is sent to DCC when the case is closed from the group.
- 4.26.17.2.3 (05-05-2008)
- Cases where No Related Statute Memorandum (RSM) Needed**
- (1) If the examiner is conducting an examination under the BSA, a related statute determination is not needed to examine for FBAR compliance. This is because no information from a tax examination or other 6103 protected source is involved.
- (2) The examiner should request and provide pertinent information necessary to determine compliance with BSA reporting and record keeping requirements, which include those relating to the FBAR. Examiners should utilize the FBAR lead sheet and make sufficient inquiries to detect potential FBAR violations in all BSA cases. Without a related statute determination, however, the examiner is precluded from accessing Title 26 data, such as the Information Document Retrieval System (IDRS).
- (3) The examiner uses the Title 31 FBAR Lead Sheet to document the examination steps taken during the FBAR portion of the BSA examination. Examination steps include determining if there is a requirement to file the FBAR and maintain required records and if the requirements were met. FBAR law and evidence is discussed in IRM 4.26.16.
- (4) If there appears to be no FBAR violation, a separate case file is not set up. If there appears to be an FBAR violation, a separate FBAR case file must be set up. FBAR cases cannot be included in the regular BSA case file. They are tracked on a separate database. FBAR penalties are assessed by IRS and the separate case file is necessary to support asserting penalties or issuing a warning letter. Non-FBAR related BSA penalties are referred to FinCEN for assessment using procedures set out in IRM 4.26.8 , Special Procedures.
- (5) To start the FBAR case when there is no RSM:
- a. The examiner will download the FMD, Form 13536 , from the IRS Forms and Publications intranet web site, and use it as an input document for the Detroit Computing Center (DCC).
 - b. The examiner will complete the entity information and as much as possible of the other information requested on the FMD.
 - c. The examiner will note in an attached memorandum that this FMD is to be used as an originating document, like a related statute memorandum, by DCC, and that there is no RSM because there is no Title 26 information being used.
 - d. The examiner will fax the FMD and the attached memorandum explaining the reason that there is no RSM to the DCC FBAR Database at Fax 313-234-2278. The original FMD and the Fax Transmission Report are retained in the FBAR case file.
 - e. DCC will enter the information from the FMD received from the examiner on the FBAR database.

4.26.17.3
(05-05-2008)
**FBAR Case File
Procedures**

- f. The examiner will update the FMD as needed, but will not forward it to DCC until the case is closed out of the group.
- (1) Whether the examiner is assigned an FBAR case with no other BSA or tax issues, or the examiner uncovered apparent FBAR violations in the course of a tax or BSA examination, the examiner will set up a separate FBAR case file that may include:
 - a. Agent Activity Record – FBAR time on this record is charged to Activity Code 545.
 - b. Related Statute Determination if appropriate.
 - c. FBAR lead sheet and work papers.
 - d. A brief summary memorandum explaining the FBAR violation(s) if any.
 - e. Copy of any delinquent FBAR(s) annotated in red on the top “Secured by Examination”, if available.
- (2) When the case is closed, the examiner will include in the file:
 - a. FBAR Monitoring Document (FMD), providing closing information for the FBAR database and
 - b. closing documents as appropriate.
- (3) Closing documents may include:
 - a. Letter 3800, Warning Letter for Apparent Foreign Bank and Financial Accounts Report Violations (copy)
 - b. Letter 3709, FBAR 30 Day Letter (transmitting Agreement for Assessment and Collection, F-13449) (copy)
 - c. Form 13449, Agreement to Assessment and Collection of Penalties Under 31 U.S.C. Sections 5321(a)(5) and 5321(a)(6) (original)
 - d. Notice 1330, Information on Making FBAR Penalty Payment By Check (copy)
 - e. Power of Attorney document (original)
- (4) DCC will include as appropriate:
 - a. Form 13448, Penalty Assessments Certification Summary (Title 31 FBAR) (internal document)
 - b. Letter 3708, Notice and Demand for Payment of FBAR Penalty (copy)
 - c. Notice 1330, Information on Making FBAR Penalty Payment By Check (copy)

4.26.17.3.1
(05-05-2008)
Working the FBAR Case

- (1) The examiner conducting the FBAR examination will:
 - a. Set up work papers on the FBAR issues in FBAR file. Each issue identified in IRM 4.26.16.3, FBAR Filing Criteria, should be addressed in determining if a U.S. person was required to file an FBAR, whether the FBAR was filed when required, and whether required records were kept. If facts have been derived from other cases (such as a related income tax case), the examiner must make copies for the FBAR case file of any documents needed for the FBAR case.
 - b. Review FBAR issues with the taxpayer/BSA entity along with other examination issues and make a decision concerning violations and penalties.
- (2) Other procedural items include:

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- a. A person may authorize a representative to receive information with respect to the FBAR examination by using IRS Form 2848, Power of Attorney and Declaration of Representative, if a related statute determination has been made. In an FBAR case that does not involve a related income tax case, a general power of attorney (POA) must be used (see IRM 4.26.8.2). The power of attorney (general or Form 2848) is retained in the case file. The FMD should always be updated with POA information. Whenever a Form 13449 is sent to DCC for penalty assessment, a copy of any POA should accompany it.
- b. FBARs are due to be filed by June 30 of the calendar year succeeding the year reported. An extension for filing a tax return is not valid for the FBAR. There are no procedures at present for granting extensions of time to file FBARs.
- c. A BSA summons, TD F 90-22.31, rather than a Title 26 summons must be used if information that is purely BSA information is sought. For BSA summons procedures see IRM 4.26.8.3. For information that can be used in both a Title 26 and an FBAR case, a Title 26 summons is valid.
- d. A waiver of the statute of limitations for the Title 26 case will not waive the statute of limitations on the FBAR case. The statute of limitations on assessment of the FBAR penalties is found in 31 U.S.C. 5321(b) (1). It is six years from the date of the transaction. In the case of filing violations, the date of the transaction is the due date for filing the FBAR; that is, June 30 of the calendar year following the year to be reported. In the case of a recordkeeping violation, the date of the transaction is the date that the examiner first requests the records required by 31 C.F.R. 103.32. Generally, section 103.32 does not require records to be maintained for more than five years. If a waiver of the statute of limitations on assessment of the FBAR penalty is needed, consult the BSA FBAR Analyst for assistance.

(3) Assistance in working the FBAR case is available from:

- a. Technical Services FBAR specialists: A list of these specialists is available on the SB/SE BSA web site at <http://SBSE.web.irs.gov/FR/BSA/default.htm>.
- b. SB/SE Counsel: Local counsel is available for FBAR questions. SB/SE Counsel has also designated SB/SE Counsel Area FBAR Coordinators. A list of these specialists is available on the SB/SE Counsel web site at <http://counsel.web.irs.gov/sbse/admin/>.
- c. BSA FBAR Analyst: A list of BSA Analysts is on the BSA web site at <http://SBSE.web.irs.gov/FR/BSA/default.htm>.

4.26.17.4
(01-01-2007)

Closing the FBAR Case

- (1) Closing procedures vary depending on the results of the examination.
- (2) In all cases, the examiner will support the determination in a summary memorandum with references to the work papers. The summary memorandum should show all years opened and the determination reached for each year. If several years are opened but a penalty is asserted only with respect to one year, the summary memorandum should provide an explanation such as "This is an LCCI case. Under LCCI guidelines an FBAR penalty will be asserted with respect to only one year" or "It is the examiner's judgment that a penalty with respect to only two years is appropriate in view of the facts and circumstances of the case."

(3) In all cases, the examiner will complete an FBAR Monitoring Document (FMD) Form 13536 for each year.

(4) There are different closing procedures depending on whether there is no violation, a violation without penalty, negligence or a nonwillful violation, a willful violation, or a referral to Criminal Investigation.

4.26.17.4.1

(05-05-2008)

Closing the FBAR Case - No Violation

(1) If no FBAR violation is found, the examiner will:

- a. Complete a summary memorandum and FBAR Monitoring Document (FMD).
- b. Close the FBAR case file to the group manager.

(2) The group manager will:

- a. Review the FBAR case file for both technical and procedural issues and note this on the activity record.
- b. Indicate on the FMD the date closed from the group.
- c. Forward on a 3210 the FBAR file to Internal Revenue Service, P.O. Box 33113, Detroit, MI 48232-0113.

(3) Detroit Computing Center (DCC) will:

- a. Enter the information from the FMD into the FBAR database.
- b. Note on the FBAR database in the comments field when and if a follow-up FBAR examination is needed.
- c. Place the case file in the FBAR historic files.

4.26.17.4.2

(05-05-2008)

Closing the FBAR Case - Warning Letter

(1) The examiner may, after discussion with the group manager, issue an FBAR Warning letter, Letter 3800, if there is a violation of the FBAR requirements but no penalty is being asserted.

- a. The examiner may determine that there was a violation but that penalties are not warranted in view of the facts and circumstances of the case.
- b. A Letter 3800 is also issued when there is evidence of a negligent violation by an individual (not a business) prior to October 23, 2004.
- c. Letter 3800 is not used in Last Chance Compliance Initiative (LCCI) cases for the years when the FBAR penalties are forgiven as a part of the LCCI agreement.

(2) If Letter 3800 is issued, the closing procedures are:

- a. The examiner will issue Letter 3800 and a copy to the person apparently in violation of the FBAR requirements and retain a copy in the file.
- b. This person will return any delinquent or corrected FBAR(s) and a copy of the warning letter to the examiner.
- c. Delinquent forms will be processed in accordance with instructions in this chapter. See IRM 4.26.17.4.8.
- d. The examiner will also complete a summary memorandum and FBAR Monitoring Document (FMD) and close the FBAR case file to the group manager.

(3) The group manager will:

- a. Review the FBAR case file for both technical and procedural issues and note this on the activity record.

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- b. Indicate on the FMD the date closed from the group.
- c. Forward on a 3210 the FBAR file to Internal Revenue Service, P.O. Box 33113, Detroit, MI 48232-0113.

(4) Detroit Computing Center (DCC) will:

- a. Enter the information from the FMD into the FBAR database.
- b. Note on the FBAR database when a follow-up FBAR examination is needed.
- c. Remove the original FBARs for entry on CBRS and retention in the Federal Records System.
- d. Place the case file in the FBAR historic files.

4.26.17.4.3
(05-05-2008)

**Closing the FBAR Case
with Penalties**

(1) If the examiner, after discussion with the group manager, determines that it is appropriate to assert an FBAR penalty and that a referral to Criminal Investigation is not appropriate or has been declined, the examiner will assert penalties in accordance with the FBAR penalty guidelines. See IRM 4.26.16 for the FBAR penalty computation rules and penalty mitigation guidelines.

(2) Once the penalties have been determined and just before the examiner is ready to issue Letter 3709, the FBAR 30 Day Letter, and Form 13449, FBAR Agreement to Assessment and Collection, the examiner will submit the FBAR case file to an SB/SE Counsel Area FBAR Coordinator.

(3) Each of the eight SB/SE Division Counsel Areas has at least one Counsel FBAR Area Coordinator. A current listing of the Area Coordinators can be accessed on the SB/SE Counsel "Contacts" web page at:
<http://counsel.web.irs.gov/sbse/admin/>. The examiner may also call local counsel for the name of the appropriate FBAR coordinator or for other assistance with respect to FBAR cases.

(4) Review by Counsel is not required:

- a. In special program agreement situations such as LCCI. This will allow the special rules of those programs to prevail. However special programs which do not require a special agreement, such as related offshore income tax cases, do require Counsel review of a related FBAR case.
- b. When the examiner has determined that there is no FBAR issue or in cases where the examiner has determined that the issuance of Letter 3800, the FBAR Warning Letter, is appropriate.

(5) Counsel will:

- a. Render its legal advice within 45 days. If coordination with an Associate Chief Counsel is necessary and will cause a delay, Counsel will inform the FBAR examiner of the potential delay. Counsel will work with the examiner to establish a shorter time frame for review if expedited review is needed.
 - b) Prepare a written memorandum of review of the FBAR case. If Counsel recommends issuance of Letter 3709, the FBAR 30-day letter, the review will be designed to assist Appeals in the event the case is appealed. If Counsel does not recommend issuance of Letter 3709, the review will state the reasons for the disagreement. If the disagreement is based upon inadequate factual development, the review should recommend areas for further examination.

- (6) After the Counsel review has been received and agreed that penalties are appropriate, the examiner will:
- a. Issue Letter 3709, the FBAR 30 day letter, and
 - b. Transmit with Letter 3709 the Form 13449, FBAR Agreement to Assessment and Collection. Although Form 13449 is shown as an Agreement, it also functions as the examiner's report of FBAR violations. It is the basis for the FBAR penalty assessment(s).
 - c. Provide the customer Notice 1330, Information on Making FBAR Penalty Payment by Check, and retain a copy in the file. This notice advises that the payment will be recorded electronically and that the person submitting payment will not receive a copy of the cancelled check.
 - d. Discuss payment. Payment on the FBAR penalty must be evidenced by a separate check or money order made out to the United States Treasury showing the FBAR account number and year. Separate checks or money orders should be written for FBAR and tax payments. When a receipt is desired, payment should be made by money order or cashiers check. The examiner should not issue a tax receipt form, such as Form 809.
 - e. No interest accrues on FBAR penalties prior to assessment, therefore only the penalty amount would be owed if full payment is made in a pre-assessment case or if payment is made within 30 days after the date a notice of the penalty amount due is first mailed to the filer. Under 31 U.S.C. § 3717(b), interest begins to accrue on the date the FBAR notice of penalty assessment is mailed but no interest is owed on payments received within thirty days from the date a notice of the penalty amount due is first mailed to the filer. In addition to interest, a six percent delinquency penalty applies to amounts remaining unpaid ninety days from the date a notice of the penalty amount due is first mailed to the filer. The applicable interest rate is found at <http://fms.treas.gov/cvfr/index.html>. This rate is updated at least annually but may be updated quarterly if certain criteria, identified in § 3717(a) (2), are met.

4.26.17.4.4
(05-05-2008)

**Closing the FBAR Case
With Penalties Agreed**

- (1) If the person apparently violating the FBAR requirements agrees to assessment of the penalties, the person returns to the examiner:
 - a. Delinquent FBARs
 - b. Signed and dated Form 13449, FBAR Agreement to Assessment and Collection
 - c. Possibly partial or full payment.
- (2) The examiner will:
 - a. Place the signed Agreement Form 13449 in the FBAR case file.
 - b. Process delinquent forms in accordance with instructions in this chapter-. See IRM 4.26.17.4.8.
 - c. Complete a summary memorandum and FBAR Monitoring Document (FMD).
 - d. Forward the FBAR case for closure to the group manager.
- (3) The group manager will:
 - a. Review the FBAR case file for both technical and procedural issues and note this on the activity record.
 - b. Indicate the date the case was closed from the group.

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- c. Forward on a 3210 the FBAR file to Internal Revenue Service, P.O. Box P.O. Box 33113, Detroit, MI 48232-0113.

(4) DCC will:

- a. Enter the information from the FMD to the FBAR database.
- b. Note on the FBAR database that a follow-up FBAR civil examination referral is needed.
- c. Forward the penalty assessment information to the Field Director, Compliance Services, Cincinnati, Small Business/Self-Employed or her designee. This designated official completes the assessment using Form 13448, Penalty Assessments Certification Summary. Form 13448 is for internal use only. It validates the assessment; i.e., it documents the Service's determination that the penalty assessed is legally due and payable. It functions in the same way as Form 23C in the Campuses. A copy of Form 13448 is placed in the case file.
- d. If the penalty has been paid in full, place the case file in the FBAR historic files.
- e. If the penalty is not paid in full, issue the Letter 3708. The Letter 3708 should be sent certified mail with a return receipt requested. Enter the interest rate on Letter 3708 according to the interest rate currently published by the Financial Management Service (FMS) at <http://fms.treas.gov/cvfr/index.html>. A copy of the Letter 3708 is sent to the Power Of Attorney (POA) as appropriate. DCC should check the FMD to determine if there is a POA. A copy of the dated Letter 3708 should be placed in the case file.
- f. Forward the collection information to FMS and place the case file in the FBAR historic files.

4.26.17.4.5
(01-01-2007)

Closing the FBAR Case - Payment

(1) (1) If there is any payment, the examiner will:

- a. Photocopy the check or money order.
- b. Copy Form 13449, front and back and paper clip the check or money order to the copy.
- c. Complete Form 3210 describing all documents.
- d. Forward by certified mail the payment, copy of Form 13449, and Form 3210 to the FBAR Payment post office box used exclusively for FBAR payments: Internal Revenue Service, P.O. Box 33115, Detroit, MI 48232-0115. This is not the same post office box used for forwarding the file.
- e. If any payment is made, the examiner will not execute a Payment Posting Voucher, Form 3244 for any payments received. If Form 3244 is inadvertently executed, the examiner will be responsible for tracing the payment to ensure that it is refunded from the tax module. The examiner will then need to obtain another payment which will be sent to DCC for posting to the FBAR database as above.

(2) Detroit Computing Center (DCC) will record and process the payment utilizing as appropriate:

- a. Form 13448, Penalty Assessments Certification Summary (Title 31 FBAR) (internal document)
- b. Letter 3708, Notice and Demand for Payment of FBAR Penalty (copy)
- c. Notice 1330, Information on Making FBAR Penalty Payment by Check

4.26.17.4.6

(01-01-2007)

Closing the FBAR Case

Unagreed

- (1) If an FBAR penalty is proposed but not agreed to, the examiner waits 45 days to see if the person will appeal as provided in Letter 3709.
- (2) In order to appeal:
 - a. The person against whom an FBAR penalty is proposed must mail a written protest in duplicate to the examiner that is postmarked before the designated response date, which is listed in the Letter 3709.
 - b. The protest must contain all the information required in Letter 3709.
 - c. An appeal requires 180 days remaining on the assessment statute of limitations. The statute of limitations on assessment of a failure to file penalty is six years from the date when the FBAR should have been filed (which is June 30th of the year following the year for which the foreign financial account is being reported).
- (3) If there is no response from the person against whom an FBAR penalty is proposed, the penalty is assessed and the collection process begins.
- (4) The examiner will:
 - a. Complete a summary memorandum and FBAR Monitoring Document.
 - b. Forward the FBAR case for closure to the group manager.
- (5) The group manager will:
 - a. Review the FBAR case file for both technical and procedural issues and note this on the activity record.
 - b. Indicate the date the case is closed from the group.
 - c. Forward the FBAR file on a 3210 to Internal Revenue Service, P.O. Box 33113, Detroit, MI 48232-0113.
- (6) Detroit Computing Center will:
 - a. Enter the information from the FMD to the FBAR database.
 - b. Note on the FBAR database that a follow-up FBAR civil examination is needed.
 - c. Forward the penalty assessment information to the Field Director, Compliance Services, Cincinnati, Small Business/Self-Employed.
 - d. This designated official completes the assessment using Form 13448, Penalty Assessments Certification Summary. Form 13448 is for internal use only. It validates the assessment, i.e., it documents the Service's determination that the penalty assessed is legally due and payable. It functions in the same way as Form 23C in the Campuses. A copy of Form 13448 is placed in the case file.
 - e. If the penalty has been paid in full, the case file can now be placed in the FBAR historic files.
 - f. If the penalty has not been paid in full, DCC will issue the Letter 3708, Notice and Demand for Payment. The letter 3708 should be sent by certified mail, return receipt requested. A copy should be placed in the case file. DCC enters the interest rate on Letter 3708 according to the interest rate currently published by the Financial Management Service (FMS) at <http://fms.treas.gov/cvfr/index.html>. DCC then places the case file in the FBAR historic files and forwards the collection information to the FMS.

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- 4.26.17.4.7 (01-01-2007)
- Closing the FBAR CaseAppealed**
- (1) If the person apparently violating the FBAR requirements appeals and there is no related Title 26 case or the related Title 26 case is agreed, the following procedures apply.
 - (2) The examiner will:
 - a. Ensure that any documents needed in any related cases or in the FBAR case are copied so that there is a fully documented case file for each.
 - b. Note on the Transmittal Letter that the case is an FBAR category case, UIL 9999.99-01, in the Appeals Coordinated Issue (ACI) Program. The Appeals Officer must contact the Appeals FBAR Coordinator prior to scheduling the initial conference. The coordinator can be reached at (818) 242-8143 x3014.
 - c. Forward, through the group manager, an FMD to DCC so that the appeal can be entered on the FBAR database.
 - (3) The group manager will:
 - a. Review the FBAR case file for both technical and procedural issues and note this on the activity record.
 - b. Indicate the date the case is closed from group.
 - c. Complete and forward the FMD to the DCC, at Internal Revenue Service, P.O. Box 33113, Detroit, MI 48232-0113.
 - d. Forward the case to Appeals following regular case processing procedures.
 - (4) DCC will record the appeal on the FBAR database and continue to monitor the statute of limitations. DCC will contact Appeals when the statute of limitations has less than a year to expire and thereafter on a regular basis.
 - (5) Appeals Officers will follow procedures outlined in "Foreign Bank and Financial Accounts Requirements Guidance for Appeal Officers" available on the Appeals web site. Appeals will close the FBAR case through DCC following the closing procedures for examiners found in this section.
 - (6) In addition to the above procedures which are to be used in all appealed cases, where there is a related Title 26 case, the examiner, the group manager, and Appeals will discuss whether the examiner should hold the FBAR case until the Title 26 case is closed or forwarded to Appeals. The different statutes of limitation are important in this discussion.
- 4.26.17.4.8 (05-05-2008)
- Delinquent FBAR Processing**
- (1) Examiners should secure delinquent or amended FBAR forms, unless a criminal referral is contemplated. In the case of a criminal referral, the examiner should not solicit delinquent or amended forms, but should accept them if offered.
 - (2) The examiner will date stamp the original delinquent FBAR form with the date received and label at the top IN RED: "Secured by BSA Examination."
 - (3) A copy of the delinquent form should be made and placed in the case file.
 - (4) Original FBAR forms are to be mailed to:

Internal Revenue Service

CTR Operations

Edit and Error Resolution Mailroom

PO Box 32621

Detroit, MI 48232

- (5) DCC will post these delinquent FBAR forms with a Saturday Julian date. This will clearly identify them as forms secured by BSA examiners and will stop all correspondence from DCC.
- (6) If the entity refuses to provide delinquent FBARs or delays past 30 days after receipt of Letter 3800, the examiner and manager will make a determination concerning the appropriate penalty. Failure to provide delinquent FBARs is a failure to cooperate which may prevent mitigation of penalty amounts.

4.26.17.5
(01-01-2007)
**FBAR Special
Procedures**

- (1) Procedures used in an FBAR examination are substantially different from those used in an income tax examination because generally, none of the provisions of Title 26 apply to FBAR examination.
- (2) Some of the special procedures that may be encountered in an FBAR examination include procedures for:
 - a. A Related Statute Memorandum
 - b. Securing a Power of Attorney
 - c. A BSA Summons
 - d. The Criminal Referral Process
 - e. Waiving Statute of Limitations
 - f. Bankruptcy

4.26.17.5.1
(01-01-2007)
**Related Statute
Determination**

- (1) Related Statute Determination is discussed in IRM 4.26.14.

4.26.17.5.2
(01-01-2007)
FBAR Power of Attorney

- (1) A power of attorney is a document that evidences the creation of a relationship between two people who are designated as the "principal" and the "agent". The principal designates the agent in the document, and the agent is authorized to act on the principal's behalf - to stand in the shoes of the principal - for whatever business the power of attorney permits.
- (2) During the course of the FBAR compliance examination:
 - a. The person under examination may request representation.
 - b. A representative may ask to submit Form 2848 to represent the person under examination.
- (3) Form 2848 was developed to meet requirements relating to tax. It is generally inappropriate for BSA examinations, including FBAR examinations.

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- (4) The BSA examiner can accept a general power of attorney valid under state law and, in cases where a related statute determination has been made, the examiner can accept a Form 2848.
 - (5) Regardless of the type of power of attorney, the original power of attorney should be retained in the FBAR examination file.
- 4.26.17.5.2.1
(01-01-2007)**
- FBAR Power of Attorney –Related Statute Memorandum Exception**
- (1) Where a related statute determination has been made, a Form 2848 may be accepted.
 - (2) In this case, Line 3 on the Form 2848 reflects either income tax in the first column or 1040 in the second column. For clarity, "FBAR Examination" may be added.
- 4.26.17.5.2.2
(01-01-2007)**
- FBAR General Power of Attorney**
- (1) The examiner will not draft a general power of attorney but can direct the person under examination to have his or her representative provide a general power of attorney.
 - (2) The power of attorney should state that it is for the limited purpose of representation of the person during the FBAR examination. All representatives should be named. The same topics generally need to be covered as on a Form 2848. For example, whether or not communications need to be made in duplicate should be addressed.
- 4.26.17.5.3
(01-01-2007)**
- FBAR Title 31 Summons**
- (1) The examiner must use the BSA summons, TD F 90-22.31, not the Title 26 summons in FBAR examinations that do not have a concurrent Title 26 examination. The BSA summons is only available in hard copy. It is used to summon and require an individual to appear and give testimony and/or produce the books, papers, records, and other data identified as essential to the civil enforcement requirements of the Currency and Foreign Transactions Reporting Act, as amended (31 U.S.C. 5311-5324); section 21 of the Federal Deposit Insurance Act (12 U.S.C. 1829b); and Title 1 of Public Law 91-508 (12 U.S.C. 1951, et seq.)
 - (2) Summons authority, completion, issuance, and special disclosure rules are covered in IRM 4.26.8.
- 4.26.17.5.3.1
(01-01-2007)**
- FBAR Title 31 Summons Approval**
- (1) A cover memorandum is prepared for the summons package. The memorandum:
 - a. Provides a brief history of the case;
 - b. Describes the potential FBAR violations; and,
 - c. States whether or not the party being summoned will comply with the summons.
 - (2) The memorandum is addressed from the examiner through his/her group manager and SB/SE Division local Counsel to the examiner's Territory Manager.
 - (3) SB/SE Division local Counsel will review the summons:
 - a. If disapproved, Counsel and the examiner will work together to resolve the problems.

- b. If approved, Counsel will prepare and send to the Territory Manager a memorandum approving issuance of the Title 31 summons.
 - (4) Only after receipt of the SB/SE Division local Counsel Approval memorandum will the Territory Manager sign (issue) the FBAR summons.
 - (5) The Territory Manager then returns the summons package to the BSA examiner for service of the summons. Procedures for service of the summons are covered in IRM 4.26.8.
- 4.26.17.5.3.2
(01-01-2007)
FBAR Title 31 Summons Enforcement**
- (1) The examiner will report immediately to the examiner's manager, the Territory Manager, and the SB/SE Division local Counsel any refusal to comply or any proceeding brought by the summoned party to quash a summons.
 - (2) The examiner will, in cases where there is a refusal or a proceeding:
 - a. Consider recommending enforcement action when the person summoned neglects or refuses to comply.
 - b. Review the summons handbook, IRM 25.5.10, for considerations in summons enforcement. The examiner will not refer a summons for enforcement in the situations given in IRM 25.5.10, for example: (i) the summoned party or their representative has contacted the Service and indicated a willingness to comply with the summons but has requested a reasonable extension of time within which to comply or (ii) the summoned party has appeared and denied under oath the possession or control of the documents called for in the summons, unless there is a good reason to believe the contrary.
 - (3) SB/SE Division local Counsel will consider the summons enforcement request.
 - a. If SB/SE Division local Counsel believes the summons can be enforced, they will forward the summons enforcement request to the appropriate US Attorney's office.
 - b. If SB/SE Division local Counsel believes the summons cannot be enforced, they will notify the examiner.
- 4.26.17.5.3.3
(01-01-2007)
FBAR Title 31 Summons Enforcement Request**
- (1) The examiner will prepare requests for enforcement of an FBAR Title 31 summons using the memorandum report format, to include the following information:
 - a. The name and full address of the person being summoned;
 - b. A summary of the pertinent facts in the investigation;
 - c. Exactly what the Service employee is seeking to obtain;
 - d. The relevancy of the records sought, including the relevancy of records pertaining to third parties;
 - e. The need or importance of such evidence to the success or completion of the investigation;
 - f. If a corporation was summoned, a statement of whether service of the summons has been made on a responsible officer and, if not, why not;
 - g. The circumstances surrounding contacts with the person summoned, explaining the defense(s) claimed for refusing to comply with the summons, and the circumstances under which the person summoned claimed the defense(s);
 - h. A transcript (if recorded) or memorandum of interview of the questions asked to the person summoned and the person's responses;

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- i. A description of any problems involving the imminent expiration of the statutes of limitation;
 - j. A statement as to any known criminal investigations by other federal agencies of the individual, and, in the case of a corporation, its officers or employees; and,
 - k. A statement as to any other known requests for summons or subpoena enforcement against the person or related parties.
- (2) The summons enforcement request memorandum is to be signed by the examiner's Territory Manager. The original and one copy of the summons are transmitted through SB/SE Division local Counsel to the U.S. Attorney's office in which the venue lies.
- 4.26.17.5.4 (05-05-2008) **FBAR Title 31 Criminal Referrals**
- (1) IRS CI has authority to examine for criminal FBAR violations.
 - a. Treasury Directive 15-41 (December 1, 1992) delegates to the Commissioner of Internal Revenue the authority to initiate investigations of any person, including banks and brokers or dealers in securities, for possible criminal violations of 31 C.F.R. part 103 (except violations of section 103.23).
 - b. Treasury Directive 15-42 (January 21, 2002), further delegates to the Commissioner investigatory authority over violations of 18 U.S.C. 1956 and 1957 where the underlying conduct is subject to investigation under Title 26 or under the Bank Secrecy Act, or 31 U.S.C. 5311–5332 (other than violations of 31 U.S.C. 5316).
 - (2) Criminal FBAR penalties appear at 31 U.S.C. 5322 and 31 C.F.R. 103.59.
 - (3) Acceptance by Criminal Investigation of an FBAR referral for criminal investigation depends on the evidence establishing willfulness and sometimes other criteria.
 - a. Willfulness is a question of intent. Willfulness involves the intentional, voluntary violation of a known legal duty.
 - b. Criminal sentencing in FBAR cases depends on the Federal Sentencing Guidelines. Federal Sentencing Guidelines for money laundering cases including criminal FBAR reporting or recordkeeping violations appear in the U.S. Sentencing Guidelines, section 2S1.3. The relevant statutes require monetary reporting without regard to whether the funds were lawfully or unlawfully obtained.
- 4.26.17.5.4.1 (05-05-2008) **FBAR Title 31 Criminal Referrals and the Fraud Technical Advisor**
- (1) A Fraud Technical Adviser (FTA) can assist the examiner in determining whether or not there was a willful violation and provide the examiner with information concerning referrals to Criminal Investigation.
 - (2) If the examiner considers that the case warrants referral for possible criminal investigation, the examiner, with the approval of the group manager, will involve an FTA as soon as possible.
 - (3) If the decision to involve the FTA is made, the examiner will fill out the Fraudulent Intent Referral Memorandum (FIRM), Form 13639. The FIRM documents the involvement of the FTA, the plan for developing the case further, and the referral recommendations of the FTA.

- (4) Any related income tax case submitted for fraud development should follow regular fraud development procedures including completion of Form 11661.
- (5) If the FTA considers that additional development is warranted, the FTA will provide a written plan of action.
- (6) If the FTA considers that criminal investigation is not appropriate:
 - a. The FTA will so advise the examiner and provide a written explanation of the reason that criminal referral is not appropriate and recommendations respecting civil penalties.
 - b. The examiner may then proceed with the FBAR case under FBAR civil procedures.
- (7) If there are firm indications of willful FBAR violations that warrant referral to Criminal Investigation, the FTA will advise the examiner and the examiner's manager of this determination.
- (8) The examiner will prepare Form 2797, Referral Report of Potential Criminal Fraud Cases, with a detailed explanation of the FBAR violations. The FTA will assist in the preparation of Form 2797 if requested by the examiner. When preparing Form 2797 for an FBAR referral, the examiner will follow the instructions attached to the form and:
 - a. Note that "filer" means the person required to file the FBAR regardless of whether or not the person filed.
 - b. Insert FBAR Violation in Item 2f.
 - c. Note that Item 3d of the Form 2797 must show that CBRS was checked for FBAR filings, if an FBAR referral to Criminal Investigation is being made.
 - d. Document on the Form 2797 Referral to CI and in the work papers the date that the entity was educated about filing and the filing compliance status at the date of the referral.
 - e. Omit items 4, 8, and 9.
- (9) If there is a related tax case, the examiner will:
 - a. Prepare a separate Form 2797 for any related tax case, if warranted.
 - b. Submit related tax and FBAR referrals to CI at the same time if possible.
 - c. Follow procedures established for criminal referrals in IRM 25.1.3.
 - d. If a related statute determination is made, a copy of the related statute determination memorandum must be attached to Form 2797.

4.26.17.5.4.2
(01-01-2007)
**FBAR Title 31 Criminal
Referrals and CI**

- (1) If the referral of the FBAR case to Criminal Investigation is declined, the examiner follows the procedures where material violations exist and civil penalties are asserted.
- (2) If referral to Criminal Investigation is accepted, the examiner will:
 - a. Place the Transmittal memorandum that indicates acceptance in the retained FBAR file.
 - b. Complete the FBAR Monitoring Document (FMD) showing CI acceptance.
 - c. Forward the FMD through the Group Manager to DCC so that the FBAR database can be updated.
- (3) DCC will:

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4.26.17.5.4.3
(01-01-2007)

FBAR Procedures After the Criminal Case

- a. Enter the information from the FMD to the FBAR database.
 - b. Note on the FBAR database that a follow-up FBAR civil examination is needed following the close of the criminal case.
 - c. Track the FBAR statute of limitations and advise the examiner's manager when there is less than a year on the statute and then at monthly intervals.
- (4) Criminal Investigation will:
- a. Discuss statute problems with the examiner and his manager.
 - b. Advise the examiner through the FTA about the final disposition of the case.
- (1) After completion of the criminal case, the examiner will:
- a. Forward any delinquent or corrected FBARs to DCC.
 - b. Commence any appropriate civil FBAR penalty action.
 - c. If no civil penalty action is appropriate, the examiner will forward the FBAR case file to Detroit Computing Center (DCC) for placement in the historic files.
- (2) DCC will then:
- a. Update the database.
 - b. Process any attached FBARs.
 - c. Place the case file in the historic files.

4.26.17.5.5
(05-05-2008)

FBAR Statute of Limitations

- (1) Title 26 statutes of limitations do not apply to FBAR cases.
- (2) The statute of limitations on assessment of civil FBAR penalties is six years from the date of the violation.
- (3) The statute of limitations on bringing suit to collect the assessment of civil penalties is two years from the date of assessment or the date any judgment becomes final in any criminal action under section 5322.
- (4) The statute of limitations on FBAR criminal penalties is five years from the date the offense is committed.

4.26.17.5.5.1
(01-01-2007)

FBAR Statute on Assessment

- (1) The period of limitation on assessment of FBAR civil penalties is found in 31 U.S.C. 5321(b)(1). Section 5321(b)(1) provides that the Secretary of the Treasury may assess a civil penalty under subsection (a) at any time before the end of the six year period beginning on the date of the transaction with respect to which the penalty is assessed.
- (2) The date of the transaction for report filing violations is June 30th of the year following the calendar year for which the foreign financial account should be reported.
- (3) The date of the transaction for recordkeeping purposes is the date that the examiner first requests the records required to be maintained under 31 C.F.R. § 103.32. Note that section 103.32 generally only requires that records be maintained for five years.

- (4) The date that the FBAR civil penalty is assessed is the date that the IRS designated official delegate stamps the assessment form. The assessment certification form is IRS Form 13448. The designated official is the Operations Officer, Cincinnati Compliance Services, CTR Operations or his/her delegate.
- 4.26.17.5.5.2
(01-01-2007)
FBAR Statute on Collection**
- (1) The period of limitation on collection of FBAR penalties is found in 31 U.S.C. 5321(b)(2). The Secretary may commence a civil action to recover a civil penalty assessed under subsection (a) at any time before the end of the two year period beginning on the later of:
- a. The date the penalty was assessed; or,
 - b. The date any judgment becomes final in any criminal action under section 5322 in connection with the same transaction with respect to which the penalty is assessed.
- (2) The date the FBAR penalty is assessed is the date that the IRS designated official stamps IRS Form 13448.
- 4.26.17.5.5.3
(01-01-2007)
Waiving the FBAR Statutes of Limitation**
- (1) FBAR civil statutes of limitation on assessment and collection may be waived.
- (2) The Service currently does not have any special procedures for soliciting waivers of the statute of limitations on assessment of the FBAR penalty.
- (3) A person may voluntarily waive the statute of limitations for assessing FBAR penalties.
- 4.26.17.5.5.4
(01-01-2007)
FBAR Statute of Limitation on Criminal Offenses**
- (1) (1) The period of limitation for FBAR criminal penalties is the general criminal statute of limitations found at 18 U.S.C. 3282. This section provides that except as otherwise expressly provided by law, no person shall be prosecuted, tried, or punished for any non-capital offense, unless the indictment is found or the information is instituted within five years next after such offense shall have been committed.
- 4.26.17.5.6
(01-01-2007)
FBAR Bankruptcy Procedures**
- (1) Bankruptcy may occur prior to or subsequent to assessment of an FBAR penalty.
- (2) If, prior to assessment of the FBAR penalty, the IRS examiner is notified of a (potential) bankruptcy with respect to the person against whom a penalty is proposed, the examiner should:
- a. Notify IRS local insolvency unit as soon as possible.
 - b. Proceed through the examination and assessment process.
 - c. Send a copy of the first notice of bankruptcy to Internal Revenue Service, Detroit Computing Center, P.O. Box 33113, Detroit, MI 48232-0113, and phone: 313-234-1273.
- (3) After assessment, if the debtor reports an FBAR penalty as a debt in the bankruptcy petition and schedules, clerks of bankruptcy courts will send notices to: U.S. Treasury, Financial Management Service Birmingham Debt Management Operations Center, P.O. Box 830794, Attn: Debt Service Branch, Birmingham, AL 35283-0794. The Financial Management Service will forward bankruptcy notices to: Internal Revenue Service, Detroit Computing Center, P.O. Box

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33113, Detroit, MI 48232-0113. DCC will then provide the bankruptcy account information to the FBAR Penalty Insolvency Bankruptcy Specialist in Insolvency Territory 16.

- (4) In the pre-assessment bankruptcy cases, the Territory Insolvency Specialist will:
 - a. Determine if a proof of claim is warranted and if so,
 - b. Prepare and mail a proof of claim.
- (5) Post-Assessment FBAR penalty bankruptcy cases will be handled by the Financial Management Service and the IRS insolvency unit.

