

FBAR Short Statute Procedures

From

<http://mysbse.web.irs.gov/exam/tip/FBAR/FBARPRO/FBARSTAT/10417.aspx>

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Title 31 section 5321(b)(1) specifies that the Secretary of the Treasury may assess a civil penalty under subsection (a) of section 5321 at any time before the end of the 6-year period beginning on the date of the transaction with respect to which the penalty is assessed.

For Reporting Violations:

The date of the transaction with respect to which the FBAR penalty is assessed is June 30th of the year following the calendar year for which an FBAR should have been filed. The statute on assessment of reporting violations will expire on June 30 of the sixth year following the due date of the FBAR.

For Recordkeeping Violations:

The date that the examiner first requests the records required to be maintained under 31 C.F.R. 103.32

Appeals will not accept a case with less than 180 days remaining on the statute of limitations for assessment. Because the FBAR statute of limitations on assessment of penalties for reporting violations runs from June 30 of the year following the year the FBAR is due and because June 30th is the 181st day of the year, there will be insufficient time to appeal a reporting violation on the first day of the calendar year the statute is to expire.

In order to assess a penalty, there must be 30 days left on the statute. If the FBAR case is controlled on the FBAR database located at the Detroit Computing Center, the examiner will be contacted shortly before the beginning of the thirty day period required for assessment. Please bear in mind that if steps have not been taken to control the FBAR case, then there are no assessment statute controls in place.

If the examiner has a case where the statute is to expire shortly before the 180 day limit for appeal or the thirty day limit for assessment, then:

1) An agreement to extend the statute of limitations may be reached, if necessary, but, as with tax cases, the examiner and his manager will need to make a determination as to whether further examination is warranted. A consent to extend the statute of limitations on a related tax case does not extend the statute of limitations on the FBAR case. Forms available for the extension of the statute in tax cases may not be used in the FBAR case. Contact an SB/SE Division Counsel FBAR Coordinator for assistance in the preparation of a consent to extend the statute of limitations. The FBAR Coordinators are listed on the following intranet web page. http://intranet.prod.irs.counsel.treas.gov/sbse/pdf/FBAR_Coordinators.pdf A map of the Areas within SB/SE Division Counsel appears at the bottom of the web page.

2) If the taxpayer does not agree to extend the statute of limitations for assessment of the FBAR penalty, a post assessment appeal may be used instead of the usual pre assessment

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appeal.

The examiner will issue the FBAR violator a Letter 3709 enclosing both a Form 13449 and an Explanation of Post-Assessment Appeal Rights. To ensure that timely and appropriate action is taken in cases where it has been established that there was an FBAR violation with respect to foreign financial accounts for a year where the statute of limitations does not allow sufficient time for a pre assessment appeal, the examiner should:

- Prepare Letter 3709 and Form 13449 for the year expiring. The letter should include a response date of two weeks from the date of the letter.
- Contact local SB/SE Counsel
 - o Explain the fact that the statute on assessment of reporting penalties will expire on June 30, of the current year.
 - o Request that Counsel conduct an expedited review
- Issue Letter 3709 for the year expiring to the nonfiler and enclose
 - o Form 13449 setting forth the penalties for the year expiring
 - o Explanation of Post-Assessment Appeal Rights,
- Close the case from the group and forward the file immediately to the FBAR database at the Detroit Computing Center (DCC).
- DCC will then assess the penalty and issue Letter 3708 describing the process for the Post-Assessment Appeal rights.
- Subsequent year FBAR examinations should be in separate case files.

EXPLANATION OF POST-ASSESSMENT APPEAL RIGHTS

As noted in the accompanying Form 13449, Agreement to Assessment and Collection of Penalties Under Title 31 USC 5321(a)(5) and 5321(a)(6), this office has determined that one or more violations have occurred with respect to Form TD F 90-22.1, Reports of Foreign Bank and Financial Accounts (FBARs), for foreign financial accounts maintained during [Insert Appropriate Year]. Too little time remains to provide an Appeals hearing before the expiration of the statute of limitations for assessing the proposed penalty, however, you have the right to request a post-assessment hearing with our Appeals office once you receive a Notice of Assessment. The Notice of Assessment will be mailed to you shortly. Please retain the enclosed Form Letter 3709 for reference if you plan to request a post-assessment hearing. You should follow the same procedures for requesting a post-assessment hearing as those listed in the enclosed Form Letter 3709 for pre-assessment hearings.

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