

FBAR Penalty For Not Filing

The penalty for not filing FinCEN Form 114, Report of Foreign Bank and Financial Accounts (aka, FBAR) can be hefty. The Form is required to be filed if the AGGREGATE value of the taxpayer's foreign financial accounts exceeds \$10,000 at any time during the calendar year. One FBAR is used to report multiple foreign financial accounts. The penalty for failure to do so depends on whether the violation was non-willful or willful. The maximum penalty for a non-willful violation is \$10,000 (adjusted for inflation).

The issue in today's case is whether the penalty is ONE or PER ACCOUNT.

Ms. Boyd had a financial interest in 13 financial accounts in the United Kingdom during 2010. She was required to file the FBAR but did not do so. IRS found she had committed 13 non-willful violations and assessed a penalty connected to EACH of the accounts. The total of the penalties assessed exceeded \$10,000.

District Court (CA) ruled in favor of IRS. Subsequent to this decision, three other District Courts (TX, CT, and NJ) dealing with similar issues ruled in favor of the taxpayers.

The Appeals Court, 9th Circuit, reversed the District Court's decision and ruled in favor of Ms. Boyd, stating the penalty for the failure to file the FBAR is one penalty, not a penalty for each account.

US v Boyd (CA 9)

This text has been shared courtesy of: David & Mary Mellem, EAs & Ashwaubenon Tax Professionals, 920-496-1065, fax 920-496-9111, ataxprof.com.

©2021 Ashwaubenon Tax Professionals. No reproduction of this article is permitted without the express written consent of Ashwaubenon Tax Professionals, 2140 Holmgren Way, Suite 1040, Green Bay, WI 54304.