



# TaxNewsFlash

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## Ninth Circuit: One penalty (not multiple) applies for untimely filing of FBAR reporting multiple bank accounts

The U.S. Court of Appeals for the Ninth Circuit today—in a case of first impression for the circuit—held that the IRS is limited to imposing one penalty for the untimely filing of a single accurate “Report of Foreign Bank and Financial Accounts” (FBAR) that includes multiple foreign accounts.

A federal district court had granted summary judgment for the government, holding that the applicable statute authorized the imposition of multiple non-willful penalties of up to \$10,000 for each foreign bank account that was required to be listed on the FBAR. The Ninth Circuit disagreed and reversed the district court and remanded the case back to that court.

The case is: *United States v. Boyd*, No. 19-55585 (9<sup>th</sup> Cir. March 24, 2021). Read the Ninth Circuit’s [decision](#) [PDF 891 KB] that includes a dissent.

### Background

The U.S. taxpayer (an individual) did not timely file an FBAR disclosing her foreign financial accounts in the United Kingdom.

- The taxpayer had a financial interest in 14 financial accounts in the United Kingdom with an aggregate balance in excess of \$10,000.
- The amounts in these accounts significantly increased between 2009 and 2011 after her father died in 2009 and she deposited her inheritance.
- The taxpayer received interest and dividends from these accounts and did not report these on her 2010 federal income tax return or disclose the accounts to the IRS.
- In 2012, the taxpayer asked to participate in the IRS’s Offshore Voluntary Disclosure Program—a program that allowed taxpayers to voluntarily report undisclosed offshore financial accounts in exchange for predictable and uniform penalties.

- After the IRS accepted the taxpayer into the program, she submitted, in October 2012, an FBAR listing her 14 foreign accounts for 2010, and amended her 2010 tax return to include the interest and dividends from these accounts. The taxpayer was granted permission by the IRS to opt out of the program in 2014.

The IRS examined the income tax return and concluded that the taxpayer had committed 13 FBAR violations—one violation for each account she failed to timely report for calendar year 2010 (the 14<sup>th</sup> account funded several of the other accounts). The late-submitted FBAR was found to be complete and accurate. The IRS concluded that the violations were non-willful, and assessed a total penalty of over \$47,000.

The government filed suit in district court seeking to obtain a judgment against the taxpayer for the penalties, plus additional late-payment penalties and interest for non-willful violations. The taxpayer argued that she had committed only one non-willful violation—not 13—and that the maximum penalty allowed by the statute for that single non-willful violation was \$10,000. The district court agreed with the IRS.

### **Ninth Circuit's decision**

The Ninth Circuit reversed the district court and concluded that 31 U.S.C. § 5321(a)(5)(A) authorizes the IRS to impose only one non-willful penalty when an untimely—but accurate—FBAR is filed, no matter the number of accounts. The Ninth Circuit held that the statute, when read with the regulations, authorizes a single non-willful penalty for the failure to file a timely FBAR. Thus, the maximum penalty for such a violation “shall not exceed \$10,000.”

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