Taxpayer Name: Taxpayer **Examiner:**
TIN:
Tax Form: TD F 90-22.1 **Date:**
Tax Year (s):

Audit Steps: *(Document audit steps taken or to be taken.)*	**Workpaper Reference**

Law: *(Tax Law, Regulations, court cases, and other authorities. If Unagreed, include Argument.)*

31 U.S.C. §§ 5314; 5321(a)(5)(A) & (B); 5321(a)(5)(C) & (D); 5321(a)(6); 5321(b)(1)

ARGUMENT:

FBAR Reasonable Cause

Reasonable cause is **based on all the facts and circumstances in each situation**.

Reasonable cause relief is generally granted when the taxpayer exercises ordinary business care and prudence in determining their tax obligations, but is unable to comply with those obligations.

Did the person act in good faith considering experience, knowledge, and education of the taxpayer. Good faith means no deception. Good faith reliance upon the advice of a tax professional means

- The tax professional was a qualified professional
- Disclosed of the existence of the account
- Disclosed all relevant facts regarding the account

Reasonable Cause is **not** the following:

- An uninformed belief that a return is not due
- Lack of knowledge
- Age
- Poor Health
- Complexity of the Law
- Originally being from another country
- Being told by the Foreign Entity/Person that there are no U.S. filing requirements
- Being told by a U.S. professional that put the taxpayer in the structure that there are no U.S. filing Requirements
- Fully cooperating with the audit process
- Incurring substantial accounting/attorney fees

If the Taxpayer stated, "In as much as the account has been reported on the income tax returns (amended), the "reasonable cause" exception to the imposition of any penalty should apply." The **taxpayer's statement** of reasonable cause **relies upon the defense of ignorance of the law**.

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ARGUMENT:

FBAR Reasonable Cause

Taxpayer appears to say in his defense that he is unaware of the duty to file an FBAR Form TD F 90-22.1 and **therefore had reasonable cause for the failure to file**, which would excuse the penalty.

The essence of this defense is that the taxpayer did not neglect a known duty and should not be penalized for ignorance of the filing requirement, especially since these returns are unusual.

However, It is not necessary to have willful neglect in order to lack reasonable cause. If a return is required under the statute and regulations, the mere uninformed belief that no return is due, no matter how genuine, is not reasonable cause.

To have reasonable cause, the taxpayer must inquire of a professional, disclose all relevant facts, and rely on the advice given. A few of the many cases supporting this proposition are:

Henningsen v. Comm'r, 243 F.2d 954 (4th Cir. 1957)
Janpol v. Commissioner, 102 T.C. 499 (T.C. 1994)

New York State Ass'n of Real Estate Bds., etc. v. Commissioner, 54 T.C. 1325 (T.C. 1970)
Heman v. Commissioner, 32 T.C. 479 (T.C. 1959)
Coshocton Sec. Co. v. Commissioner, 26 T.C. 935 (T.C. 1956)

Knollwood Memorial Gardens v. Commissioner, 46 T.C. 764 (T.C. 1966)

Nothing more than belief that one is not required to file a return is not enough to discharge the penalty. *Eagle Piece Dye Works*, 10 B.T.A. 1360; *Rafael Sabatini*, 32 B.T.A. 705; affd., 98 Fed. (2d) 753, in which the court said: **"The taxpayer may well have believed that he was liable for no tax and yet have had no reasonable cause for not filing timely returns."**

Some of these cases involve other relatively obscure returns such as personal holding company returns (Coshocton Securities Co.) domestic trust returns (Heman), and returns of excise tax on profit sharing trust prohibited transactions (Janpol).

The point of all these cases is that the **taxpayers are obligated to inform themselves of their various filing obligations, and that ignorance of the filing duty is not reasonable cause** unless they consulted a professtional advisor and were told they need not file.

Based on these cases, the defense that " I didn't know I had to file" is not acceptable.

As stated in Mostafa v. Commissioner, T.C. Memo. 2006-106 and the cases cited therein, **"Petitioner's mistake as to ignorance of the law does not amount to reasonable cause that would relieve her from the addition to tax."**

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ARGUMENT:

FBAR-ELEMENTS in ALL FBAR PENALTY CASES to Satisfy and Verify

Thus, in order for the Government **to prevail in any FBAR Penalty Case**, the United States **must satisfy the following 7 elements** stated in United States vs. Jon McBride Case No.2:09-cv-278 DN:

1. **Taxpayer was a citizen of the United States**, **or** a **resident** or a **person doing business in the United States** during the years in question.

2. **Taxpayer had a financial interest** in, **or signatory or other authority over**, a **bank**, **securities** or **other financial accounts** during the years in question.

3. The **bank**, securities or other financial account **had a balance** that **exceeded $10,000** during the years in question.

4. The **bank**, securities or other financial account was **in a foreign country**;

5. **Taxpayer failed to disclose the bank**, securities or other financial account;

6. The **failure to report was Willful or Non-Willful**; and

7. The amounts of the **penalties were proper**.

The **Secretary implemented** the **regulatory requirements** with a **two-step reporting process**.

1) Form 1040, Schedule B, Part III instructs taxpayers to indicate an interest in a financial account in a foreign county by checking “Yes” or “No” in the appropriate box.

2) Form 1040 further refers taxpayers to Form TD F 90-22.1 which provides specific instructions for reporting a financial interest in or authority over bank accounts, securities accounts, or other financial accounts in a foreign country.

Taxpayer Name: Taxpayer **Examiner:**
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ARGUMENT:

FBAR-BURDEN OF PROOF

The FBAR Penalty statute at issue, 31 U.S.C. § 5321(b)(2), permits the Secretary of Treasury to "commence a civil action to recover a civil penalty assessed under subsection (a) . . . ."

The **statute does not specify the legal standard to be applied by courts** in such an action. The **one district court that has directly addressed the question of the burden of proof in a civil FBAR penalty case**, ***United States v. Williams***, concluded that the United States' burden of proof was **"the preponderance of the evidence"** on all questions before the court, **including the question of whether the taxpayer's failure to report in that case was "willful."** *United States v. Williams*, No. 1:09-cv-437, 2010 WL 3473311 (E.D. Va. Sep. 1, 2010), *rev'd on other grounds*, *United States v. Williams*, No. 10-2230, 2012 WL 2948567 (4th Cir. Jul. 20, 2012). "In enforcement actions brought by the Government in other contexts, . . . the Government is required to prove its case by a preponderance of the evidence on the record established at trial." *Id*. at *1 (internal citations omitted)). In addition, the district court in *Williams* held that "[t]he Court's review is '*de novo*, and the general rule is that it is a decision based on the merits of the case and not on any record developed at the administrative level.'" *Id.* (quoting *Eren v. Comm'r*, 180 F.3d 594 (4th Cir. 1999)).

The preponderance of the evidence standard applied by the district court in *Williams* is the correct standard. As with Government penalty enforcement and collection cases generally, absent a statute that prescribes the burden of proof, imposition of a higher burden of proof is warranted only where "particularly important individual interests or rights," are at stake. *See Herman & MacLean v. Huddleston*, 459 U.S. 375, 389 (1983); *Grogan v. Garner*, 498 U.S. 279, 286 (1991).

Because the FBAR penalties at issue in this case only involve money, it does not involve "particularly important individual interests or rights" as that phrase is used in *Huddleston* and *Grogan*. In *Huddleston*, the court of appeals had reversed the district court, stating that the district court's application of the preponderance-of-the-evidence standard in connection with a fraudulent misrepresentation case was incorrect and that a "clear and convincing evidence" standard should have applied in connection with allegations of fraud. 459 U.S. at 379. **The Supreme Court reversed, stating that the applicable burden was merely a preponderance of the evidence in cases, even where allegations of fraud were involved**, unless "particularly important individual interests or rights are at stake." *Id*. at 390.

ARGUMENT:

FBAR-BURDEN OF PROOF

By contrast, imposition of even severe civil sanctions that do not implicate such interests has been permitted after proof by a preponderance of the evidence. *See*, *e.g., United States v. Regan*, 232 U.S. 37, 48-49 (1914) (proof by a preponderance of the evidence suffices in civil suits involving proof of acts that expose a party to a criminal prosecution).

Id. at 389-90. *United States v. Regan* held that, at least where the Government is suing to recover a monetary penalty (as is the case here), its suit is a "civil action" to be "conducted and determined according to the same rules and with the same incidents as are other civil actions." 232 U.S. at 46-47. The logic of *Huddleston* has been applied in the civil tax-penalty area. *See, e.g., Mattingly v. United States*, 924 F.2d 785, 787 (8th Cir. 1991) ("The standard of proof in these [civil tax violation] cases is usually a preponderance of the evidence, and by statute the burden of proof is often placed on the government.").

Moreover, the Supreme Court has been unwilling to require that litigants meet a higher burden of proof than the preponderance of the evidence standard where the statute does not specify a higher burden of proof. *See Grogan*, 498 U.S. at 286 ("The language of [the statute] does not prescribe the standard of proof . . . . This silence is inconsistent with the view that Congress intended to require a special, heightened standard of proof."). **With respect to 31 U.S.C. §§ 5314 and 5321, Congress did not specify any special, heightened standard of proof**. As a result, there is no reason to deviate from the default burden of proof applicable in civil cases.

Therefore, the United States bears the burden of proving that McBride willfully failed to file FBARs with respect to the accounts at issue by the preponderance of the evidence.

ARGUMENT:

Taxpayer Name: Taxpayer **Examiner:**
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FBAR-Willfulness

Section 5321(a)(5) does not define how to assess whether an individual acted willfully in his failure to comply with the reporting requirements imposed by § 5314.

"'[W]illfully' is a '**word of many meanings whose construction is often dependent on the context in which it appears.'"** *Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47, 57 (2004) (quoting *Bryan v. United States*, 524 U.S. 184, 191 (1998)).

Because § 5321(a)(5) involves civil penalties, the applicable definition of willfulness is that which has been used in other civil contexts, including civil tax collection matters and compliance with reporting requirements. Where willfulness is a condition of civil liability, it covers "not only knowing violations of a standard, but reckless ones as well." *Safeco Ins. Co.*, 551 U.S. at 57; *cf. United States v. Illinois Central R. Co.*, 303 U.S. 239, 242-43 (1938) ("willfully" includes "conduct marked by careless disregard whether or not one has the right to so act") (citation omitted). **Therefore, "willfulness" may be satisfied by establishing the individual's reckless disregard of a statutory duty, as opposed to acts that are known to violate the statutory duty at issue**. *See Safeco Ins. Co.*, 551 U.S. at 57. **An improper motive or bad purpose is not necessary to establish willfulness in the civil context**. *Am. Arms Int'l v. Herbert*, 563 F.3d 78, 83 (4th Cir. 2009); *Prino v. Simon*, 606 F.2d 449, 451 (4th Cir. 1979).

The Supreme Court recently confirmed that acting with "willful blindness" to the obvious or known consequences of one's action also satisfies a willfulness requirement in both civil and criminal contexts. *See Global-Tech Appliances, Inc. v. SEB S.A.*, 131 S. Ct. 2060, 2068-69 (2011) **("persons who know enough to blind themselves to direct proof of critical facts in effect have actual knowledge of those facts")** (citing *United States v. Jewell*, 532 F.2d 697, 700 (9th Cir. 1976) (*en banc*)).

Under the "willful blindness" standard, "a willfully blind defendant is one who takes deliberate actions to avoid confirming a high probability of wrongdoing and who can almost be said to have actually known the critical facts." *Id*. at 2070-71.

Where a taxpayer makes a "conscious effort to avoid learning about reporting requirements," evidence of such willful blindness is a sufficient basis to establish willfulness. *United States v. Williams*, Case No. 10-2230, 2012 WL 2948569, at *4 (4th Cir. Jul. 20, 2012) (internal quotations omitted).

Willfulness is the **voluntary, intentional violation of a known legal duty**.

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FBAR-Willfulness

In civil contexts involving a requirement to report or disclose certain information to the IRS, willfulness has been defined as conduct which is voluntary, rather than accidental or unconscious. *Lefcourt v. United States*, 125 F.3d 79, 83 (2d Cir. 1997) (defining "willfulness" in the context of a civil penalty for willfully failing to disclose required information to the IRS as conduct that "requires only that a party act voluntarily in withholding requested information, rather than accidentally or unconsciously."); *accord Denbo v. United States*, 988 F.2d 1029, 1034-35 (10th Cir. 1993) (defining "willful" conduct as a "voluntary, conscious and intentional decision") (quoting *Burden v. United States*, 486 F.2d 302, 304 (10th Cir. 1973), *cert. denied*, 416 U.S. 904 (1974)). Conduct that evidences "reckless disregard of a known or obvious risk" or a "failure to investigate . . . after being notified [of the violation]" also satisfies the civil standard for willfulness in such contexts. *Denbo*, 988 F.2d at 1033.

Willfulness may also "be proven through inference from conduct meant to conceal or mislead sources of income or other financial information." *United States v. Sturman*, 951 F.2d 1466, 1476-77 (6th Cir. 1991). Moreover, willful intent may be proved by circumstantial evidence and reasonable inferences drawn from the facts because direct proof of the taxpayer's intent is rarely available. *See id.* (citing *Spies v. United States*, 317 U.S. 492, 499 (1943)).

FBAR-Reasonable Cause and Willfulness

- A person that chose not to file an FBAR based upon the the good faith reliance on the advice of a competent tax professional could have reasonable cause.
- Good faith reliance on bad advice from a competent tax professional could be reasonable cause.
- Deception = Bad Faith and Then, No Reasonable Cause.

Willful blindness is a voluntary, intentional, reckless failure to discover a legal duty (willful ignorance, intentional avoidance, blatant ignorance) proved by circumstantial evidence subject to different interpretations, but to prove one must show the person was in a position to acquire the knowledge by linking facts, telling a story, arguing the evidence that failing to report was necessary to carry-out some plan.

- Purpose of the Foreign Account (Why not U.S. Account-Cash Hoard)
- Probe Any Statements by the Taxpayer About Financial Privacy.
- Source of the Funds in the Account
- Steps to Conceal the Account (Foreign Entities-How did TP access account-Wires?)
- Passive Beneficiaries have comparably less willfulness

ARGUMENT:

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FBAR-Willfulness

In general, the test for willfulness is whether there was a voluntary, intentional violation of a known legal duty. The willfulness requirement is designed to exclude a failure that is done by mistake or accident, or for some other innocent reason. A finding of willfulness under the Bank Secrecy Act must be supported by proof of the person's knowledge of the reporting requirements and the person's conscious choice not to comply with those requirements.

Thus, if a person knows of the FBAR reporting requirement and purposefully chooses not to report an account that should be reported, that person has committed a **willful violation**. **Willfulness** can rarely be proven by direct evidence, since it **is a state of mind**; it is usually **established** by drawing a **reasonable inference from the available facts**. The government may base a determination of willfulness in the failure to file an FBAR on inference from conduct meant to conceal or mislead sources of income or other financial information. For example, willfulness could be inferred from conduct such as keeping a double set of books, making false entries or alterations, concealment of assets, covering up sources of income, destroying books or records, handling of one's affairs to avoid making the records usual in transactions of the kind, and any conduct, the likely effect of which would be to mislead or conceal. For FBAR, this could include concealing signature authority, interests in various transactions, and interests in entities transferring cash to foreign banks.

An example of a case where there would be willfulness is where a person previously completed and filed an FBAR, but fails to file an FBAR in subsequent years when required. The previous FBAR filing establishes that the person had knowledge of the filing requirement and provides strong evidence of willfulness. Or, if a person received a warning letter informing him of his FBAR filing requirement, but he continues to fail to file an FBAR there is strong evidence of willfulness because the person knew of the requirement to file an FBAR from the prior warning letter and still did not file.

Even if a taxpayer does not actually know of a duty to file an FBAR report, **willfulness may be inferred from a conscious effort to avoid learning about the FBAR reporting and recordkeeping requirements**. This is sometimes called **willful blindness**.

An example that shows willful blindness would be where **a person admits knowledge of and failure to answer a question concerning signature authority at foreign banks on Schedule B of his income tax return.** This section of the return refers taxpayers to the instructions for Schedule B that provide further guidance their responsibilities for reporting foreign bank accounts and discusses the **duty to file Form 90-22.1**. These resources indicate that the person could have learned of the filing and recordkeeping requirements quite easily. It is reasonable to assume that a person who has foreign bank accounts should read the information specified by the government in tax forms.The failure to follow-up on this knowledge and learn of the further reporting requirement as suggested on Schedule B is evidence of willful blindness on the part of the person.

To summarize, in the FBAR situation, the only thing that a person need know is that he has a reporting requirement. **If a person has that knowledge, the only intent needed to constitute violation of the requirement is a conscious choice not to make the report**. Alternatively, in the willful blindness situation, the only intent one needs is a conscious choice not to learn about one's own reporting requirements. In other words, in the FBAR situation, **the choice** (Le. intent) **not to make a report or not to learn about the reporting requirement of the reporting requirement necessarily entails a choice/intent to violate the law**.

ARGUMENT:

FBAR-Willful versus Non-Willful Penalty

- The **primary difference** between **Willful and Non-Willful FBAR Penalties** is the **Degree of Fault by the Taxpayer**.
- **Willful Penalty**-**Voluntary, Intentional violation of a Known Legal Duty**.
- **Non-Willful Penalty**-an involuntary, unintentional violation of a legal duty.

Proof of Voluntary and Intentional

- No Reasonable Cause
- Deliberate Choices
- A motive to hide the accounts tends to show violation was deliberate and not accidental
- Absence of motive does not negate willfulness if other evidence shows violation was not accidental or unintentional.
- Bad motive Is not required.

Proof of Known Legal Duty

- **Direct Evidence**
  - Statement by the person that he knew the filing requirements
  - FBAR for a previous year, or incomplete FBAR for current year
  - Prior FBAR compliance action
- **Circumstantial Evidence**
  - Return Preparer asked about foreign accounts and person lied
  - Failed to disclose the account or income for many years
  - Person otherwise concealed the account

ARGUMENT:

Factors Supporting Willful FBAR Penalty

- Opened the foreign bank account
- Owner of, or a financial interest in, the foreign account
- Tax non-compliance
- Did not seek advice, or relied upon the advice of a promoter, foreign banker, or other unqualified tax professional.
- Violations persist after notification of FBAR reporting requirements
- Foreign account not disclosed to return preparer
- No business reason for the foreign account
- No family or business connection to the foreign country
- An offshore entity owns the account
- Previously-filed FBARs do not include all foreign accounts
- Illegal income in the foreign account
- Participated in an abusive tax avoidance scheme

Factors Not Supporting Willful FBAR Penalty

- Inherited the foreign bank account
- Only signature authority over the foreign bank account
- Tax compliance
- Relied upon the advice of a tax return preparer, a CPA, an attorney, or another qualified tax professional.
- Full compliance after notification of FBAR reporting requirements
- Foreign account disclosed to return preparer
- Business reason for the foreign account
- Family or business connection to the foreign country
- Person owns the account in his name

ARGUMENT:

Constructive Knowledge Imputed to Taxpayers Who Sign Their Federal Tax Returns

All persons in the United States are charged with knowledge of the Statutes-at-Large. *Jones*

v. United States, 121 F.3d 1327 (9th Cir. 1997) (citing *Bollow v. Federal Reserve Bank*, 650 F.2d 1093, 1100 (9th Cir.1981)). **It is well established that taxpayers are charged with the knowledge, awareness, and responsibility for their tax returns, signed under penalties of perjury, and submitted to the IRS**. *Magill v. Comm'r*, 70 T.C. 465, 479-80 (1978), *aff'd*, 651 F.2d 1233 (6th Cir. 1981); *Teschner v. Comm'r*, T.C. Memo. 1997-498, *17 (1997); *accord United States v. Overholt*, 307 F.3d 1231, 1245-46 (10th Cir. 2002) (observing that in *Bryan v. United States*, 524 U.S. 184, 194-95 (1998), the Supreme Court distinguished cases like *Cheek v. United States*, 498 U.S. 192 (1991) and *Ratzlaf v. United States*, 510 U.S. 135 (1994) from another context of willfulness on the grounds that the **"highly technical statutes" involved in criminal tax prosecutions "carve out an exception to the traditional rule that ignorance of the law is no excuse and require that the defendant have knowledge of the law."**) (internal quotation marks and citations omitted); *see also Am. Vending Group, Inc. v. United States*, 102 A.F.T.R.2d 6305, *6 (D. Md. 2008) **("Failing to read does not absolve a filer of his or his corporation's legal obligations**. Of course if one does not read the instructions, one does not know of the obligation to file the informational returns.").

In *United States v. Williams*, the only case to examine willfulness in the context of a civil FBAR penalty, the Fourth Circuit recently held that a taxpayer was willful in failing to comply with FBAR requirements when he signed a federal tax return that failed to disclose the existence of foreign accounts, "thereby declaring under penalty of perjury that he had 'examined this return and accompanying schedules and statements' and that, to the best of his knowledge the return was 'true, accurate, and complete.'" *See United States v. Williams*, Case No. 10-2230, 2012 WL 2948569, at * 4 (4th Cir. Jul. 20, 2012). The Fourth Circuit reversed the district court's findings of fact as "clearly erroneous," on the grounds that the district court failed to consider the taxpayer's signature on his returns sufficient evidence of his knowledge of his failure to comply with the FBAR requirement. "**A taxpayer who signs a tax return will not be heard to claim innocence for not having actually read the return, as he or she is charged with constructive knowledge of its contents."** *Id*. (quoting *Greer v. Comm'r*, 595 F.3d 338, 347 n.4 (6th Cir. 2010)). At a minimum, "line 7a's directions to '[s]ee instructions for exceptions and filing requirements for Form TD F 90-22.1'" puts a taxpayer "on inquiry notice of the FBAR requirement." *Id*. As a result, the Fourth Circuit held that **Williams's explicit statement that he never consulted Form TD F 90-22.1 or its instructions, never read line 7a, and "never paid any attention to any of the written words on his federal tax return" constituted a "'conscious effort to avoid learning about reporting requirements,'" and his false answers on his federal tax return "evidence conduct that was 'meant to conceal or mislead sources of income or other financial information."** *Id*. (quoting *Sturman*, 951 F.2d at 1476).

ARGUMENT:

Constructive Knowledge Imputed to Taxpayers Who Sign Their Federal Tax Returns

A taxpayer's signature on a return is sufficient proof of a taxpayer's knowledge of the instructions contained in the tax return form and in other contexts. **"In general, individuals are charged with knowledge of the contents of documents they sign—that is, they have 'constructive knowledge' of those contents."** *Consol. Edison Co. of N.Y., Inc. v. United States*, 221 F.3d 364, 371 (2d. Cir. 2000). In *In re Crawley*, 244 B.R. 121, 130 (Bankr. N.D. Ill. 2000), the debtors contended that they did not read and review the information in their tax returns, which were prepared for them by their accountant, so they could not have failed to pay their taxes willfully. Despite not reviewing the returns, the court charged the debtors with knowledge of the contents of their returns, stating: [**P]eople who sign tax returns omitting income or overstating deductions often blame their accountant or tax preparer. But these arguments never go anywhere. People are free to sign legal documents without reading them, but the documents are binding whether read or not.** *Id*. at 130 (quoting *Novitsky v. Am. Consulting Engr's, L.L.C.*, 196 F.3d 699, 702 (7th Cir. 1999)).

Many cases have cited the proposition that "[a] taxpayer's signature on a return does not in itself prove his knowledge of the contents, **but knowledge may be inferred from the signature along with the surrounding facts and circumstances, and the signature is *prima facie* evidence that the signer knows the contents of the return**." *See, e.g.*, *United States v. Mohney*, 949 F.2d 1397, 1407 (6th Cir 1991); *accord Hayman v. Comm'r*, 992 F.2d 1256, 1262 (2d Cir. 1993) (holding that where a taxpayer "claims to have signed the returns without reading them, [he or] she nevertheless is charged with constructive knowledge of their contents"). However, the "knowledge of the contents" discussed therein refers to the knowledge of what entries and submissions are made by the taxpayer or the taxpayer's preparer. *Mohney*, 949 F.2d at 1407 ("Such surrounding facts and circumstances include the defendant's knowledge of the business' jury was permitted to infer knowledge of the contents of the return from the signature on the return alone. *See, e.g., United States v. Olbres*, 61 F.3d 967, 971 (1st Cir. 1995) (in prosecution for tax fraud, "jury may permissibly infer that a taxpayer read his return and knew its contents from the bare fact that he signed it"); *United States v. Romanow*, 509 F.2d 26, 27 (1st Cir. 1975) (**jury could believe from the uncontested signature of the defendant on return that he had read the form, despite his claim that he merely signed the return that was prepared by bookkeeper**).

ARGUMENT:

Constructive Knowledge Imputed to Taxpayers Who Sign Their Federal Tax Returns

In another case where plaintiffs alleged that a bank had a duty to inform its

depositors of the FBAR requirement, the district court held that the plaintiffs could not show justifiable or reasonable reliance on any advice given (or not given) by the bank in interpreting the instructions on the tax return. *See Thomas v. UBS AG*, No. 11C4798, 2012 WL 2396866, *5 n.2 (N.D. Ill. Jun. 21, 2012). **"The simple yes-or-no question of Schedule B makes it inconceivable that [a taxpayer] could have misinterpreted this question."** *Id*. (**holding that it was not possible to have reasonably or justifiably relied on any negligent or fraudulent representation concerning the applicability of the FBAR requirement**).