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<b>FBAR Penalties; Post 10/22/2004; SB/SE E&amp;G Examiner Lead Sheet</b>				
<b>Tax Period</b> (may consider up to 6 years, if applic.)	<b>Previously Assessed</b>	<b>Per Exam</b>	<b>Adjustment</b>	<b>Reference</b>

**Conclusion:** *(Reflects the final determination on the issue.)*

*The following techniques are not intended to be all-inclusive nor are they mandatory steps to be followed. Judgment should be used in selecting the techniques that apply to each taxpayer.*

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

**Workpaper Reference**

1. General Info – [Report of Foreign Bank & Financial Accounts TD-F 90-22.1 \[FBAR\]](#):
  - a. FBARs are Treasury forms, not regular IRS forms. Form TD-F 90-22.1 can be found in the IRS Forms Repository by entering Catalog # 12996D.
  - b. [FBAR Form TD-F 90-22.1](#) is due **June 30** following the calendar year in which reporting requirements were met.
  - c. **Effective July 1, 2013, all FBARs must be filed electronically** with the Enterprise Computing Center in Detroit [**ECC** (formerly DCC)]. They are not filed with IRS campuses.
    - I. After June 30, 2013, you should no longer secure any paper delinquent or amended FBARs.
    - II. For additional information on electronic filing, see [Examiner Guidance—FBAR E-File and Delinquent or Corrected FBARs](#) on the E&G sharepoint, FBAR folder.
  - d. Income tax and E&G audits are Title 26 examinations; FBAR inquiries are Title 31 examinations. IRC provisions generally do not apply to FBARs.
  - e. **FBAR Code & Regs:** 31 USC §§ 5314 and 5321; 31 CFR §§ 1010.350; 1010.306; 1010.420; 1010.820; and 1010.840; **formerly:** 31 CFR §§ 103.24; 103.27; 103.32; 103.57; and 103.59, respectively.
  - f. April 2003: Title 31 FBAR enforcement authority was delegated from FinCEN to IRS.
  - g. Info gathered in a Title 26 audit **cannot** be used in a Title 31 inquiry **unless** there is a Related Statute Determination (RSD), by your Territory Manager [see Steps # 3 and 4]. A Related Statute Determination (RSD) is made when the TM signs the submitted

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<p>Related Statute Memorandum (RSM), which is submitted by you, as described in this lead sheet and in the E&amp;G FBAR Workshop 2013 (on the E&amp;G sharepoint, FBAR folder).</p> <p>h. Penalties for periods after 10/22/2004 are computed differently than under prior law.</p>	
<p>2. Determine whether FBAR was required [see step #1(e) for FBAR code and reg sections]:</p> <p>a. Taxpayer is a “US person”. <a href="#">IRM 4.26.16.3.1</a>.</p> <p>b. US person had a financial account. <a href="#">IRM 4.26.16.3.2</a>.</p> <p>c. Financial account was in a foreign country. <a href="#">IRM 4.26.16.3.3</a>.</p> <p>d. US person had financial/signatory/other authority over the foreign financial account. <a href="#">IRM 4.26.16.3.4</a> and <a href="#">IRM 4.26.16.3.5</a>.</p> <p>e. Aggregate foreign account balances, in dollars, exceeded \$10,000 at any time in the calendar year. <a href="#">IRM 4.26.16.3.6</a>.</p>	
<p>3. Determine whether FBARs were filed, <b><i>without directly asking the taxpayer</i></b>:</p> <p>a. Directly asking the taxpayer if FBARs were filed <b>prior</b> to obtaining a Related Statute Determination from your TM [RSM/RSD; Step # 4] will cause all info from the Title 26 audit to be unusable in a Title 31 inquiry (FBAR penalties). <a href="#">IRM 4.26.17.2(1)f</a>. So, prior to obtaining the RSD from your TM, you <b>should not</b> directly ask the taxpayer whether FBARs were filed; nor should you ask for copies of filed or delinquent FBARs.</p> <p>I. However, in your Information Document Request [“IDR”] (as part of your Title 26 case) you <b>can</b> ask for information related to any foreign accounts, such as:  Please state whether [the taxpayer] held any foreign accounts. If so, please provide the following information:</p> <p>i. The name and address of the bank(s) where the foreign account(s) is/was held;</p> <p>ii. Bank account number(s);</p> <p>iii. Owner(s) of the bank account(s);</p> <p>iv. The balance of each named account at X date(s).</p> <p>You are not soliciting the FBAR form, but you’re essentially soliciting the information the taxpayer is required to keep. These inquiries are relevant to your Title 26 case.</p> <p>b. Prior to obtaining the RSD from your TM, you <b>can</b> also check the Currency and Banking Retrieval System [<b>CBRS</b>] for FBAR filings. Use <a href="#">Form 10509</a>. Discuss the research request with your manager, then forward the request to the <a href="#">E&amp;G FBAR Coordinator</a>, who will forward it to a designated resource person. Include in your research request:</p> <p>I. The name of the decedent, executor, trustee, spouse, or possibly others with an interest in or authority over the foreign accounts.</p> <p>II. Research the last 6 years, if applicable. Filings for some years or accounts, but not others, can indicate knowledge or willfulness.</p> <p>III. For estate and/or gift cases, consider post-transfer years, if applicable.</p>	

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<p>4. If no record of FBAR filing, if filed FBAR appears to be incomplete, or if other indications of FBAR requirements arise during your Title 26 exam, consult your group manager, then prepare <a href="#">Form 13535</a>, Related Statute Memo [RSM], for the Territory Manager's [TM] approval.</p> <ol style="list-style-type: none"> <li>a. Complete a separate RSM <u>for each year</u> an FBAR was required for your taxpayer.</li> <li>b. Complete a separate RSM <u>for each person/entity</u> that was required to file FBAR. That is, one foreign account may cause multiple filing requirements for a single year:             <ol style="list-style-type: none"> <li>I. Complete a separate RSM for each person/entity, and each officer/agent of the entity, with signature or other authority over the account.</li> </ol> </li> <li>c. Group manager initials concurrence with each RSM, then sends the RSMs to the TM. <a href="#">IRM 4.26.17.2.1(2)</a>.</li> </ol>	
<p>5. If the TM does <b>not</b> approve an FBAR inquiry, place a copy of RSM, Form 13535, in the Title 26 case file. This terminates your FBAR responsibilities. <a href="#">IRM 4.26.17.2.2(1)</a>.</p>	
<p>6. If TM approves, fax the signed RSM (now an RSD), Form 13535, to ECC at Fax # <b>313-234-2278</b>. Print out and retain a <b>Fax Transmission Report</b> from your fax machine, to verify the date ECC was notified of the commencement of the FBAR case. <a href="#">IRM 4.26.17.2.2(2)</a>. Document your FBAR F9984. See Step #7.</p>	
<p>7. Upon TM approval, set up a separate FBAR case file.</p> <ol style="list-style-type: none"> <li>a. Enter TM-approved FBAR case on IMS             <ol style="list-style-type: none"> <li>I. Create a manual return in IMS for each FBAR case                 <ol style="list-style-type: none"> <li>i. If your TP is no longer living, use a V with the TIN; if still living, no V. The case is set up on the TIN of the person who had signature authority over the foreign account (or financial interest in the foreign account).</li> <li>ii. MFT is C6</li> <li>iii. Activity Code is 545</li> <li>iv. Use the SAIN Code that goes with your FBAR-generating tax case</li> <li>v. UIL is 09999.99-01 FBAR Penalty</li> <li>vi. Any tracking and/or project code(s) will mirror that of your FBAR-generating tax case</li> <li>vii. Each separate FBAR case will appear as direct exam time on your timesheet</li> <li>viii. Your FBAR case time is not charged to an AIMS database</li> </ol> </li> <li>II. Within IMS, for each separate FBAR case, complete Form 5345-D to establish ERCS controls. Submit for processing as you normally would. (See the FBAR-ERCS Guide on the E&amp;G sharepoint, FBAR folder, for additional information on filling out the Form 5345-D.)</li> </ol> </li> </ol> <p>Each case will include:</p> <ol style="list-style-type: none"> <li>b. The E&amp;G Examination Planning and Workpapers Index.</li> <li>c. Form 9984. Time on the FBAR case is charged to <b>Activity Code 545</b>.</li> <li>d. Original RSM, Form 13535 (now an RSD), and the fax transmission report showing date faxed to ECC.</li> </ol>	

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<p>e. This FBAR Lead Sheet.  f. Copies of CBRS research.  g. Copies of all relevant records from the related Title 26 case.</p> <p>[See Step # 29 for contents of a closed FBAR case file.]</p>	
<p>8. Complete <a href="#">Form 13536</a>, FBAR Monitoring Document [<b>FMD</b>], to the extent possible. Fax the FMD to ECC at FAX # <b>313-234-2278</b>. Fax updates of FMD, Form13536, to ECC as needed. The original FMD stays in the FBAR case file until closing. <a href="#">IRM 4.26.17.2.2</a>.</p>	
<p>9. To start a FBAR case when there is no RSM, refer to <a href="#">IRM 4.26.17.2.3 (5)</a>.</p>	
<p>10. Notify taxpayer that an FBAR case has commenced. Document Form 9984. Notice can be either:</p> <p>a. Verbal – during work on the Title 26 case; or  b. Letter – issue <a href="#">Letter 4265</a>, FBAR Appointment Letter.</p>	
<p>11. Power of Attorney [<b>POA</b>] for FBAR representation:</p> <p>a. A <b>Form 2848</b> POA may be used <b>if</b> the TM approves the RSM, Form 13535, when there is a Title 26 case, where Form 2848, first Line 3, column 1 states “estate”, “gift”, or “income” (as applicable); and first Line 3, column 2 states 706, 709, or 1041 (as applicable). <a href="#">IRM 4.26.17.5.2.1</a>.</p> <p>b. To include the FBAR case, Form 2848, second Line 3, column 1 should state “Matters relating to Foreign Bank and Financial Accounts Report”; second Line 3 column 2 should state “TD F 90-22.1–FBAR Exam”.</p> <p>c. <b>If there were no related estate and/or gift tax issues or no RSM, Form 2848 cannot be used</b> – taxpayers may use a “<b>general POA</b>” executed under applicable state law. See <a href="#">IRM 4.26.8.2</a>.</p> <p>d. Update the FBAR Monitoring Document, Form 13536, with the POA info and fax to ECC at FAX # 313-234-2278.</p> <p>e. The original Form 2848 or “general POA” stays in the FBAR case file.</p> <p>f. If a new Form 2848 includes coverage of Title 26 matters, also fax to CAF per normal procedures.</p>	

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<p>12. Work the FBAR case:</p> <ul style="list-style-type: none"> <li>a. Work papers created for FBAR issues go in the FBAR file, not the Title 26 file.</li> <li>b. For each year, and for each person/entity, you must establish that the FBAR filing criteria were met as listed in Step # 2. [Also see instructions listed at end of the FBAR form (TD F 90-22.1), and, generally, at the <a href="#">Bank Secrecy Act [BSA] FBAR website.</a>]</li> <li>c. Documenting ownership and the type of authority over each foreign account is critical to establish FBAR filing requirements. Documenting account transactions, and aggregate and maximum balances, is critical in determining penalty amounts and any mitigation. [Cross-reference Step # 21.]</li> <li>d. For the evidence needed to show willfulness, see <a href="#">IRM 4.26.16.4.5.4.</a> <ul style="list-style-type: none"> <li>I. For more information on willful v. non-willful, see the E&amp;G FBAR Workshop 2013 on the E&amp;G sharepoint, FBAR folder.</li> </ul> </li> </ul>	
<p>13. Information Document Request ["IDR"]—Importance of IDR date:</p> <ul style="list-style-type: none"> <li>a. Account balances on the date you request the taxpayer to produce FBAR records ["IDR date"] may be necessary to compute the FBAR statutory penalty ceiling for recordkeeping violations, per <a href="#">IRM 4.26.16.4.5.5(5)</a>. [Cross-reference Step # 21].</li> <li>b. To document the date the taxpayer received the IDR—which fixes the date on which account balances are used to compute recordkeeping violation statutory penalty maximums—it is suggested that the IDR for FBAR records be issued either: <ul style="list-style-type: none"> <li>I. By certified mail, return receipt requested, or,</li> <li>II. In person, by having the taxpayer initial and date the IDR to confirm receipt.</li> </ul> </li> <li>c. Document the activity record as to the date taxpayer received the IDR.</li> </ul>	
<p>14. Summons:</p> <ul style="list-style-type: none"> <li>a. Title 26 summons, <b>Form 2039</b>, may be used <b>if</b> the TM approves the RSM, Form 13535, <u>and</u> the info can be used in the Title 26 matter. <a href="#">IRM 4.26.17.3.1 (2)(c)</a>.</li> <li>b. If no approved RSM, or info will not be used in a Title 26 matter, <b>BSA Title 31 summons</b> must be used – refer to <a href="#">IRM 4.26.17.5.3</a> and <a href="#">IRM 4.26.8.3</a>.</li> </ul>	
<p>15. Statutes [31 U.S.C. § 5321(b)(1); <a href="#">IRM 4.26.17.5.5</a>]:</p> <ul style="list-style-type: none"> <li>a. Title 26 ASED extension will <b>not</b> extend the Title 31 FBAR penalty statute.</li> <li>b. FBAR <b>civil</b> penalty statute is 6 years from "transaction date". <ul style="list-style-type: none"> <li>I. For filing violations the "transaction date" is FBAR due date [6/30 of following year].</li> <li>II. For recordkeeping violations the "transaction date" is the date you first request the records required by <b>31 CFR §§ 1010.420</b> (formerly 31 CFR 103.32). [See Step #13.] Required record retention is generally 5 years.</li> </ul> </li> <li>c. FBAR civil penalty assessment date is the date the <b>Operations Officer, Cincinnati Compliance Services, CTR Operations</b> [or delegate] stamps the assessment certification, Form 13448. You must close FBAR civil penalty cases with sufficient time on the statute to allow processing of the assessment certification, Form 13448.</li> </ul>	

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<p>d. Document the FBAR penalty statute in the Administrative section of FBAR case's workpapers and activity record.</p> <p>e. See Form: <a href="#">Consent To Extend FBAR Statute</a> for extension/waiver of the FBAR civil penalty statute. <b>FBAR statute extensions require Counsel coordination—consult <a href="#">FBAR Coordinators</a>.</b></p> <p>h. FBAR <b>criminal</b> penalty statute is 5 years from the date the offense was committed.</p>	
<p>16. Delinquent FBARs to be secured by Examination. <a href="#">IRM 4.26.17.4.8</a>:</p> <p>a. Effective July 1, 2013, all FBARs—including original, delinquent, or amended—must be electronically filed by the taxpayer. See <a href="#">Examiner Guidance—FBAR E-File and Delinquent or Corrected FBARs</a> on the E&amp;G sharepoint, FBAR folder (includes information for FBAR filers).</p> <p>b. Solicit delinquent or amended FBARs (to be filed electronically by the taxpayer), unless criminal referral is contemplated. (As with any failure to file situation, if a criminal referral is contemplated, soliciting delinquent FBARs may harm the case.)</p> <p>c. Filing data is available for examiners on CBRS within 48 hours.</p> <p>d. Include any CBRS research done to review delinquent or amended filings in your FBAR case file. Note in your F9984 and on the FBAR copies of the obtained from CBRS that they were solicited to be electronically filed by Examination.</p> <p>e. ECC posts delinquent FBARs with a Saturday Julian date, to distinguish them as having been secured by examiners.</p>	
<p>17. Bankruptcy Procedures – See <a href="#">IRM 4.26.17.5.6</a>.</p>	
<p>18. FBAR Penalty Computation in General – <a href="#">IRM 4.26.16.4</a>:</p> <p>a. Penalties can be for violation of filing requirements [31 CFR 1010.350 (formerly 31 CFR 103.24)] or recordkeeping requirements [31 CFR 1010.306 (formerly 31 CFR 103.32)]. <b>Both</b> filing and recordkeeping penalties can apply to the same <b>account</b> for the same <b>year</b>.</p> <p>b. After 10/22/2004 there are four civil penalties: Non-willful; Willful; Negligence; and Pattern of negligence.</p> <p>c. Civil penalties have <u>statutory</u> maximum amounts, but no floor. <u>The penalty amount is at your and your manager's discretion, which is the reason for penalty mitigation guidelines.</u></p> <p>d. May have multiple penalties for each foreign account; e.g., there could be both a reporting and a recordkeeping violation for a single account in which 2 persons (e.g., 2 executors) have an interest. There would be 2 FBAR penalties against each person, for a total of 4 penalties arising from the single account.</p> <p>e. Can impose both civil and criminal penalties for same FBAR violation [31 USC § 5321(d)].</p>	
<p>19. Penalty Amounts, Post 10/22/2004, <u>if no mitigation</u> – see <a href="#">IRM 4.26.16.4.3</a> and <a href="#">IRM 4.26.16.4.4</a>:</p> <p>a. <b>Non-willful violations</b> – 31 USC § 5321(a)(5)(A) and (B) – applies to individuals and business entities; maximum \$10,000; reasonable cause exception may apply if the foreign transaction or account balance was properly reported on a delinquent or amended FBAR; mitigation guidelines available.</p> <p>b. <b>Willful violations</b> – 31 USC § 5321(a)(5)(A) and (C) – applies to individuals and</p>	

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<p>business entities; maximum is greater of \$100,000 or 50% of the transaction amount or account balance; no reasonable cause exception; mitigation guidelines available.</p> <p>c. <b>Negligence</b> – 31 USC § 5321(a)(6)(A) – applies only to business entities; maximum \$500 per each violation; no reasonable cause exception; no mitigation.</p> <p>d. <b>Pattern of Negligence</b> – 31 USC § 5321(a)(6)(B) – applies only to business entities; maximum \$50,000 per entity; no reasonable cause exception; no mitigation.</p> <p>e. <b>Warning:</b> The FBAR regulations, 31 CFR 1010.820 (formerly 31 CFR 103.57) have <b>not</b> yet been revised to reflect changes in:</p> <p>I. Negligence penalty, 31 USC 5321(a)(6)(A): applicability extended to all businesses [not just financial institutions], effective 10/27/2001.</p> <p>II. Willfulness penalty, 31 USC 5321(a)(5)(C): ceiling increased effective 10/23/2004.</p>	
<p><b>20. Mitigation Guidelines, “Normal” FBAR Penalties – <a href="#">IRM 4.26.16.4.6</a>:</b></p> <p>a. Mitigation computations use maximum account balances during the calendar year, and <u>the guidelines are found only in the IRM</u>, not in the Title 31 Code or Regulations.</p> <p>b. Mitigation is not available for FBAR Negligence or Pattern of Negligence penalties. <a href="#">IRM 4.26.16.4.3.4 (2)</a> and <a href="#">IRM 4.26.16.4.3.6 (2)</a>.</p> <p>c. Threshold Conditions – see the 4 conditions in <a href="#">IRM 4.26.16.4.6.1(2)</a>.</p> <p>d. Non-willful has 3 penalty levels. See <a href="#">IRM 4.26.16.4.6.2</a> and <a href="#">IRM Exhibit 4.26.16-2</a>.</p> <p>e. Willful has 4 penalty levels. See <a href="#">IRM 4.26.16.4.6.3</a> and <a href="#">IRM Exhibit 4.26.16-2</a>.</p>	
<p><b>21. Penalty Computations –</b></p> <p>a. Different reference amounts are used to compute the <b>statutory</b> penalty ceiling under the Title 31 Code &amp; Regulations, and <b>mitigated</b> penalty maximums <b>under the IRM</b>.</p> <p>I. Statutory penalty ceilings are based on account balances on the <b>“violation date”</b>, per Title 31 Code &amp; Regs.</p> <p>II. Mitigated penalty maximums are based on highest account balance during the <b>calendar year</b>, per IRM 4.26.16.4.6.2(5) and/or IRM 4.26.16.4.6.3(2)(a) and (b).</p> <p>b. Filing violations – FBAR <b>due date</b> is the violation date. Balance in account at the close of the following June 30 [due date] is the statutory penalty ceiling calculation amount. <a href="#">IRM 4.26.16.4.5.5(4)</a>.</p> <p>c. Recordkeeping violations – The date you request records [<b>IDR date</b>; see Step #13] is the violation date. Balance in account at the close of the day records are requested [IDR date] is the statutory penalty ceiling calculation amount. <a href="#">IRM 4.26.16.4.5.5(5)</a>.</p> <p>d. For mitigation levels and mitigated penalty amounts, need maximum aggregate balances and maximum separate balances in each account <b>during the calendar year</b>, as opposed to the “due date” or “IDR date” balances used to determine statutory penalty ceilings. <a href="#">IRM Exhibit 4.26.16-2</a>.</p>	
<p><b>22. CI Referral and FBAR Criminal Penalties – See <a href="#">IRM 4.26.17.5.4</a>.</b></p>	
<p><b>23. Closing – No violation – <a href="#">IRM 4.26.17.4.1</a>:</b></p> <p>a. Write a Summary Memorandum: Show years opened, filing requirement, or lack thereof, for each year, computation of aggregate balances, and work paper references. <a href="#">IRM 4.26.17.4</a>.</p> <p>b. Update your FMD, Form 13536, for each year and close the case to Group Manager.</p>	

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<p>c. Group Manager updates Form 9984 and the FMD, Form 13536, for closing information. GM faxes or emails the final FMD to ECC, and then forwards the FBAR file with Form 3210 to <b>IRS, PO Box 33113, Detroit, MI 48232-0113.</b></p>	
<p>24. Closing - Warning only – <a href="#">IRM 4.26.17.4.2</a>:</p> <ul style="list-style-type: none"> <li>a. Violations may not warrant penalties after discussion with group manager.</li> <li>b. Write a Summary Memorandum: Show years opened, filing requirements, aggregate balances, penalty determination for each year, reason(s) for non-assertion, and work paper references. <a href="#">IRM 4.26.17.4.</a></li> <li>c. <b>Issue Letter 3800</b> - Original and copy to taxpayer; keep a copy for the case file.</li> <li>d. You solicit electronic filing by taxpayer of delinquent/amended FBARs. See <u>Examiner Guidance—FBAR E-File and Delinquent or Corrected FBARs</u> on the E&amp;G sharepoint, FBAR folder.</li> <li>e. For electronically filed delinquent/corrected FBARs, you should send a copy to the taxpayer along with a copy of Letter 3800.</li> <li>f. Update FMD, Form 13536, for each year and close to Group Manager.</li> <li>g. Group Manager updates Form 9984 and the FMD, Form 13536, for closing information. GM faxes or emails the final FMD to ECC, and then forwards the FBAR file with Form 3210 to <b>IRS, PO Box 33113, Detroit, MI 48232-0113.</b></li> </ul>	
<p>25. Closing – <b>Penalties Asserted – General Procedures</b> – <a href="#">IRM 4.26.17.4.3</a>:</p> <ul style="list-style-type: none"> <li>a. Write a Summary Memorandum: Show years opened, filing requirements, aggregate balances, penalty determination for each year, reason(s) for assertion/non-assertion; reasonable cause, mitigation, and work paper references. <a href="#">IRM 4.26.17.4.</a></li> <li>b. <b>Submit penalty case for mandatory Counsel review. Before proposing FBAR penalties to taxpayers, Counsel review is mandatory.</b> Counsel should render advice within 45 days. Counsel review is not required for warning letter cases or no violation cases. <ul style="list-style-type: none"> <li>I. SB/SE examiners submit FBAR case file to <a href="#">SB/SE Counsel Area FBAR Coordinator</a> (or check the Key Points of Contact at the <a href="#">Offshore/International Counsel page</a>).</li> <li>II. In your F886-A (or facsimile), <b>fully explain</b> whether willful or non-willful penalties are being asserted; show how the penalties were calculated; all fully supported by the evidence gathered during the FBAR exam (correspondence, interviews, etc.)</li> </ul> </li> <li>c. After Counsel concurrence: <ul style="list-style-type: none"> <li>I. Issue <a href="#">Letter 3709</a>, FBAR 30-day letter [2 copies to taxpayer].</li> <li>II. Issue <a href="#">Form 13449</a>, FBAR Agreement to Assessment (waiver)[FBAR report; 2 copies].</li> <li>III. Include <a href="#">Notice 1330</a>, Making FBAR Penalty Payment by Check.</li> </ul> </li> <li>d. Payment issues – <a href="#">IRM 4.26.17.4.3 (6)(c) – (e)</a> and <a href="#">IRM 4.26.17.4.5 (1)</a>: <ul style="list-style-type: none"> <li>I. Checks are credited electronically, so cancelled checks not returned to the payer. If a receipt is requested, recommend payment by money order or cashier’s check. <b>Form 809 tax receipts are not issued.</b></li> <li>II. Separate check/money order for FBAR penalties, made out to United States Treasury, notated with taxpayer’s TIN and year(s) penalties were applied.</li> </ul> </li> </ul>	



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<p>III. Interest – no pre-assessment interest; interest does not accrue if penalty paid within 30 days after the penalty assessment is mailed.</p> <p>IV. Copy the check/money order for the FBAR case file. You send the payment, copy of Form 13449, and Form 3210 to FBAR Payment address: <b>IRS, PO Box 33115, Detroit, MI 48232-0115</b> [note different address than where case files are sent].</p> <p>V. Do <b>NOT</b> use Form 3244 for FBAR payments. See <a href="#">IRM 4.26.17.4.5 (1)(e)</a> for the consequences.</p>	
<p>26. Closing - Penalties Recommended – Agreed – <a href="#">IRM 4.26.17.4.4</a>:</p> <p>a. Signed and dated <a href="#">Form 13449</a> received from taxpayer.</p> <p>b. You solicit electronic filing by taxpayer of delinquent/amended FBARs. See <a href="#">Examiner Guidance—FBAR E-File and Delinquent or Corrected FBARs on the E&amp;G sharepoint, FBAR folder</a>.</p> <p>c. For electronically filed delinquent/corrected FBARs, use CBRS request to obtain confirmed filed copies of FBAR for the case file.</p> <p>d. Payment processed per Step # 25. See <a href="#">IRM 4.26.17.4.3 (6)(c) – (e)</a> and <a href="#">IRM 4.26.17.4.5 (1)</a>.</p> <p>e. Update FMD, <a href="#">Form 13536</a>, and Summary Memorandum to indicate agreement/payment.</p> <p>f. Use Letter 5080, FBAR Penalty Agreed Closing letter</p> <p>g. Close to Group Manager.</p> <p>g. Group Manager updates the Form 9984 and FMD, Form 13536, with closing information. GM faxes or email the final FMD to ECC, and then forwards the FBAR case file with Form 3210 to <b>IRS, PO Box 33113, Detroit, MI 48232-0113</b> [note different address than where payments are sent].</p>	
<p>27. Closing - Penalties Recommended – Unagreed - Regular (Not Appealed) – <a href="#">IRM 4.26.17.4.6</a>:</p> <p>a. <i>Unless the expiration of the statute of limitations on the FBAR penalty is imminent, wait 45 days after issuance of Letter 3709 and Form 13449 for taxpayer to request an appeal.</i></p> <p>I. In order to assess an FBAR penalty, there must be 30 days left on the statute. If you have an FBAR penalty case where the statute is to expire shortly before the 180 day limit for appeal (time to go to Appeals) or the 30 day limit for assessment, then:</p> <p>i. An agreement to extend the statute may be reached. (Note that consent to extend the statute on a related Title 26 tax case does not extend the FBAR statute.) Contact <a href="#">SBSE Counsel FBAR Coordinator</a> for assistance in preparing the consent to extend the statute.</p> <p>ii. If the taxpayer does not agree to extend the statute of limitations (to allow time to assess the penalty), a post-assessment appeal may be used instead of the usual pre-assessment appeal.</p> <p>iii. For additional information, see <a href="#">FBAR Short Statute Procedures</a>.</p> <p>b. Ensure all documents needed from a Title 26 case are copied for the FBAR file.</p> <p>c. Update the FMD, Form 13536, and Summary Memorandum to indicate <u>no appeal</u> and</p>	

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<p>close case to Group Manager.</p> <p>d. Group Manager updates Form 9984 and the FMD, Form 13536, for closing information. GM faxes or emails the final FMD to ECC, and then forwards the FBAR file with Form 3210 to <b>IRS, PO Box 33113, Detroit, MI 48232-0113</b>.</p> <p>e. Note: <b>Advise the taxpayer</b> that if the penalty has to be assessed because of an imminent statute, there is no right of post-assessment appeal for any assessed penalty over \$100,000.</p>	
<p>28. Closing - Penalties Recommended – Unagreed - Appealed – <a href="#">IRM 4.26.17.4.7</a>:</p> <p>a. Wait 45 days after issuance of Letter 3709 and Form 13449 for taxpayer to request an appeal.</p> <p>b. An appeal requires that the taxpayer provide 2 copies of a written protest to you, postmarked prior to the Letter 3709 response date, containing all information listed in Letter 3709, and with <u>at least 180 days remaining on the FBAR statute</u>. [Review Step #27 if insufficient time remains.]</p> <p>c. Ensure all documents needed from a Title 26 case are copied for the FBAR file.</p> <p>d. Use Transmittal <a href="#">Form 4665</a> – in Note add, “<b>FBAR category case; UIL 999.99-01; Appeals Coordinated Issue [ACI] Program</b>”, and “<b>Appeals Officer must contact Appeals FBAR Coordinator prior to scheduling initial conference at 818-242-8143 x3014</b>”.</p> <p>e. Update the FMD, Form 13536, and Summary Memorandum to indicate an appeal and close case to Group Manager.</p> <p>f. Group Manager completes FMD, Form 13536, and forwards to ECC at <b>IRS, PO Box 33113, Detroit, MI 48232-0113</b>. Group Manager documents Form 9984 and closes the case file to Appeals per regular closing procedures.</p> <p>g. Note: <b>Advise the taxpayer</b> that if the penalty has to be assessed because of an imminent statute, there is no right of post-assessment appeal for any assessed penalty over \$100,000.</p>	
<p>29. Closing – IMS; and possible contents of FBAR case file:</p> <p>a. IMS: Use normal closing procedures</p> <p>b. Form 3198, if case is unagreed and going to Appeals (either pre- or post-assessment)</p> <p>c. Copies of secured delinquent FBARs.</p> <p>d. Closing documents could include:</p> <p>I. Letter 3800 copy – Warning Letter</p> <p>II. Letter 3709 copy – FBAR 30-day Letter</p> <p>III. Form 13449 original – Agreement to Penalties. Should be accompanied by an extra copy of any POA form, per <a href="#">IRM 4.26.17.3.1(2)(a)</a>.</p> <p>IV. Notice 1330 copy – Making FBAR Penalty Payment by Check</p> <p>V. Copy of any payments of FBAR penalties made by the taxpayer.</p> <p>e. Power of Attorney [General or Form 2848] original</p> <p>f. FMD, Form 13536, w/ the fax transmission report(s), and memo to ECC, if there was no RSM.</p> <p>g. Summary Memorandum explaining the FBAR violations and calculations of penalties, if any, or other result</p>	

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- h. FBAR statute extension, if applicable
- i. Examination Planning and Workpapers Index.
- j. Form 9984 time on the FBAR case is charged to **Activity Code 545**.
- k. Original RSD, signed Form 13535, and the fax transmission report (to ECC).
- l. This FBAR Lead Sheet.
- m. FBAR penalty computations and other workpapers
- n. Copies of CBRS research.
- o. Copies of relevant records from the Title 26 case, or records secured via FBAR IDR.
- p. Correspondence – could include copies of Letter 4265; Letter 3800; Letter 3709; Notice 1330; Appeals requests from taxpayer
- q. Information Document Requests – with certified mail receipt attached, if applicable.

Note: There is no Form 5344 for FBAR case file closings.

**Facts:** (Document the relevant facts.)

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

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

Specific citations:

**31 U.S.C. § 5314 (a)**– Requires that certain U.S. entities must file FBARs, as follows:

*... the Secretary of the Treasury shall require a resident or citizen of the United States or a person in, and doing business in the United States, to keep records and file reports, when the resident, citizen, or person makes a transaction or maintains a relation for any person with a foreign financial agency. The records and reports shall contain the following information in the way and to the extent the Secretary prescribes:*

- (1) the identity and address of participants in a transaction or relationship*
- (2) the legal capacity in which a participant is acting*
- (3) the identity of real parties in interest.*
- (4) a description of the transaction.*

**31 U.S.C. § 5321(a)(5)(A) and (B)**– Provide for a non-willful penalty for FBAR violations as follows:

*(5) Foreign financial agency transaction violation. -*

*(A) Penalty authorized. - The Secretary of the Treasury may impose a civil money penalty on any person who violates, or causes any violation of, any provision of section 5314.*

*(B) Amount of penalty. -*

- (i) In general. - Except as provided in subparagraph (C), the amount of any civil penalty imposed under subparagraph (A) shall not exceed \$10,000.*
- (ii) Reasonable cause exception. - No penalty shall be imposed under subparagraph (A) with respect to any violation if -*
  - (I) such violation was due to reasonable cause, and*
  - (II) the amount of the transaction or the balance in the account at the time of the transaction was properly reported.*

**31 U.S.C. § 5321(a)(5)(C) and (D)** - Provide for a willfulness penalty for FBAR violations as follows:

*(C) Willful violations. - In the case of any person willfully violating, or willfully causing any violation of, any provision of section 5314 -*

- (i) the maximum penalty under subparagraph (B)(i) shall be increased to the greater of -*
  - (I) \$100,000, or*
  - (II) 50 percent of the amount determined under subparagraph (D), and*
- (ii) subparagraph (B)(ii) shall not apply.*

*(D) Amount. - The amount determined under this subparagraph is -*

- (i) in the case of a violation involving a transaction, the amount of the transaction, or*
- (ii) in the case of a violation involving a failure to report the existence of an account or any identifying information required to be provided with respect to an account, the balance in the account at the time of the violation.*

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**31 U.S.C. § 5321(a)(6)(A)** - Provides a negligence penalty for foreign financial agency transaction violations as follows:

*(6) Negligence. -*

*(A) In general. - The Secretary of the Treasury may impose a civil money penalty of not more than \$500 on any financial institution or nonfinancial trade or business which negligently violates any provision of this subchapter or any regulation prescribed under this subchapter.*

**31 U.S.C. § 5321(a)(6)(B)** - Provides a negligence penalty for a pattern of foreign financial agency transaction violations as follows:

*(B) Pattern of negligent activity. - If any financial institution or nonfinancial trade or business engages in a pattern of negligent violations of any provision of this subchapter or any regulation prescribed under this subchapter, the Secretary of the Treasury may, in addition to any penalty imposed under subparagraph (A) with respect to any such violation, impose a civil money penalty of not more than \$50,000 on the financial institution or nonfinancial trade or business.*

**31 U.S.C. § 5321(b)(1)** – prescribes the statute of limitation for civil FBAR penalties, as follows:

*(b) Time Limitations for Assessments and Commencement of Civil Actions. -*

*(1) Assessments. - The Secretary of the Treasury may assess a civil penalty under subsection (a) 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.*

### **31 CFR § 1010.350 - Reports of foreign financial accounts:**

**(Revision 2/24/2011, Effective 3/28/2011 and Formerly 31 C.F.R. § 103.24-See below)**

*(a) In general. Each United States person having a financial interest in, or signature or other authority over, a bank, securities, or other financial account in a foreign country shall report such relationship to the Commissioner of Internal Revenue for each year in which such relationship exists and shall provide such information as shall be specified in a reporting form prescribed under 31 U.S.C. 5314 to be filed by such persons. The form prescribed under section 5314 is the Report of Foreign Bank and Financial Accounts (TD-F 90-22.1), or any successor form. See paragraphs (g)(1) and (g)(2) of this section for a special rule for persons with a financial interest in 25 or more accounts, or signature or other authority over 25 or more accounts.*

*(b) United States person. For purposes of this section, the term "United States person" means--*

*(1) A citizen of the United States;*

*(2) A resident of the United States. A resident of the United States is an individual who is a resident alien under 26 U.S.C. 7701(b) and the regulations thereunder but using the definition of "United States" provided in 31 CFR 1010.100(hhh) rather than the definition of "United States" in 26 CFR 301.7701(b)-1(c)(2)(ii); and*

*(3) An entity, including but not limited to, a corporation, partnership, trust, or limited liability company created, organized, or formed under the laws of the United States, any State, the District of Columbia, the Territories and Insular Possessions of the United States, or the Indian Tribes.*

*(c) Types of reportable accounts. For purposes of this section--*

*(1) Bank account. The term "bank account" means a savings deposit, demand deposit, checking, or any*

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*other account maintained with a person engaged in the business of banking.*

*(2) Securities account. The term "securities account" means an account with a person engaged in the business of buying, selling, holding or trading stock or other securities.*

*(3) Other financial account. The term "other financial account" means--*

*(i) An account with a person that is in the business of accepting deposits as a financial agency;*

*(ii) An account that is an insurance or annuity policy with a cash value;*

*(iii) An account with a person that acts as a broker or dealer for futures or options transactions in any commodity on or subject to the rules of a commodity exchange or association; or*

*(iv) An account with--*

*(A) Mutual fund or similar pooled fund. A mutual fund or similar pooled fund which issues shares available to the general public that have a regular net asset value determination and regular redemptions; or*

*(B) Other investment fund. [Reserved]*

*(4) Exceptions for certain accounts.*

*(i) An account of a department or agency of the United States, an Indian Tribe, or any State or any political subdivision of a State, or a wholly-owned entity, agency or instrumentality of any of the foregoing is not required to be reported. In addition, reporting is not required with respect to an account of an entity established under the laws of the United States, of an Indian Tribe, of any State, or of any political subdivision of any State, or under an intergovernmental compact between two or more States or Indian Tribes, that exercises governmental authority on behalf of the United States, an Indian Tribe, or any such State or political subdivision. For this purpose, an entity generally exercises governmental authority on behalf of the United States, an Indian Tribe, a State, or a political subdivision only if its authorities include one or more of the powers to tax, to exercise the power of eminent domain, or to exercise police powers with respect to matters within its jurisdiction.*

*(ii) An account of an international financial institution of which the United States government is a member is not required to be reported.*

*(iii) An account in an institution known as a "United States military banking facility" (or "United States military finance facility") operated by a United States financial institution designated by the United States Government to serve United States government installations abroad is not required to be reported even though the United States military banking facility is located in a foreign country.*

*(iv) Correspondent or nostro accounts that are maintained by banks and used solely for bank-to-bank settlements are not required to be reported.*

*(d) Foreign country. A foreign country includes all geographical areas located outside of the United States as defined in 31 CFR 1010(hhh).*

*(e) Financial interest. A financial interest in a bank, securities or other financial account in a foreign country means an interest described in this paragraph (e):*

*(1) Owner of record or holder of legal title. A United States person has a financial interest in each bank, securities or other financial account in a foreign country for which he is the owner of record or has legal title whether the account is maintained for his own benefit or for the benefit of others. If an account is maintained in the name of more than one person, each United States person in whose name the account is maintained has a financial interest in that account.*

*(2) Other financial interest. A United States person has a financial interest in each bank, securities or other financial account in a foreign country for which the owner of record or holder of legal title is--*

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*(i) A person acting as an agent, nominee, attorney or in some other capacity on behalf of the United States person with respect to the account;*

*(ii) A corporation in which the United States person owns directly or indirectly more than 50 percent of the voting power or the total value of the shares, a partnership in which the United States person owns directly or indirectly more than 50 percent of the interest in profits or capital, or any other entity (other than an entity in paragraphs (e)(2)(iii) through (iv) of this section) in which the United States person owns directly or indirectly more than 50 percent of the voting power, total value of the equity interest or assets, or interest in profits;*

*(iii) A trust, if the United States person is the trust grantor and has an ownership interest in the trust for United States Federal tax purposes. See 26 U.S.C. 671-679 and the regulations thereunder to determine if a grantor has an ownership interest in the trust for the year; or*

*(iv) A trust in which the United States person either has a present beneficial interest in more than 50 percent of the assets or from which such person receives more than 50 percent of the current income.*

*(3) Anti-avoidance rule. A United States person that causes an entity, including but not limited to a corporation, partnership, or trust, to be created for a purpose of evading this section shall have a financial interest in any bank, securities, or other financial account in a foreign country for which the entity is the owner of record or holder of legal title.*

*(f) Signature or other authority --(1) In general. Signature or other authority means the authority of an individual (alone or in conjunction with another) to control the disposition of money, funds or other assets held in a financial account by direct communication (whether in writing or otherwise) to the person with whom the financial account is maintained.*

*(2) Exceptions --(i) An officer or employee of a bank that is examined by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, or the National Credit Union Administration need not report that he has signature or other authority over a foreign financial account owned or maintained by the bank if the officer or employee has no financial interest in the account.*

*(ii) An officer or employee of a financial institution that is registered with and examined by the Securities and Exchange Commission or Commodity Futures Trading Commission need not report that he has signature or other authority over a foreign financial account owned or maintained by such financial institution if the officer or employee has no financial interest in the account.*

*(iii) An officer or employee of an Authorized Service Provider need not report that he has signature or other authority over a foreign financial account owned or maintained by an investment company that is registered with the Securities and Exchange Commission if the officer or employee has no financial interest in the account. "Authorized Service Provider" means an entity that is registered with and examined by the Securities and Exchange Commission and that provides services to an investment company registered under the Investment Company Act of 1940.*

*(iv) An officer or employee of an entity with a class of equity securities listed (or American depository receipts listed) on any United States national securities exchange need not report that he has signature or other authority over a foreign financial account of such entity if the officer or employee has no financial interest in the account. An officer or employee of a United States subsidiary of a United States entity with a class of equity securities listed on a United States national securities exchange need not file a report concerning signature or other authority over a foreign financial account of the subsidiary if he has no financial interest in the account and the United States subsidiary is included in a consolidated report of the parent filed under this section.*

*(v) An officer or employee of an entity that has a class of equity securities registered (or American depository receipts in respect of equity securities registered) under section 12(g) of the Securities Exchange*

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*Act need not report that he has signature or other authority over the foreign financial accounts of such entity or if he has no financial interest in the accounts.*

*(g) Special rules --(1) Financial interest in 25 or more foreign financial accounts. A United States person having a financial interest in 25 or more foreign financial accounts need only provide the number of financial accounts and certain other basic information on the report, but will be required to provide detailed information concerning each account when so requested by the Secretary or his delegate.*

*(2) Signature or other authority over 25 or more foreign financial accounts. A United States person having signature or other authority over 25 or more foreign financial accounts need only provide the number of financial accounts and certain other basic information on the report, but will be required to provide detailed information concerning each account when so requested by the Secretary or his delegate.*

*(3) Consolidated reports. An entity that is a United States person and which owns directly or indirectly more than a 50 percent interest in one or more other entities required to report under this section will be permitted to file a consolidated report on behalf of itself and such other entities.*

*(4) Participants and beneficiaries in certain retirement plans. Participants and beneficiaries in retirement plans under sections 401(a), 403(a) or 403(b) of the Internal Revenue Code as well as owners and beneficiaries of individual retirement accounts under section 408 of the Internal Revenue Code or Roth IRAs under section 408A of the Internal Revenue Code are not required to file an FBAR with respect to a foreign financial account held by or on behalf of the retirement plan or IRA.*

*(5) Certain trust beneficiaries. A beneficiary of a trust described in paragraph (e)(2)(iv) of this section is not required to report the trust's foreign financial accounts if the trust, trustee of the trust, or agent of the trust is a United States person that files a report under this section disclosing the trust's foreign financial accounts.*

**HISTORY:** [75 FR 65806, Oct. 26, 2010; 76 FR 10234, 10245, Feb. 24, 2011]

**NOTES:** [EFFECTIVE DATE NOTE: 76 FR 10234, 10245, Feb. 24, 2011, revised this section, effective Mar. 28, 2011.]

**31 C.F.R. § 103.24** – Requires FBAR filing and recordkeeping, as follows:

[Generally effective through 3/28/2011 unless elect to follow **31 CFR § 1010.350- See above**]

*(a) Each person subject to the jurisdiction of the United States (except a foreign subsidiary of a U.S. person) having a financial interest in, or signature or other authority over, a bank, securities or other financial account in a foreign country shall report such relationship to the Commissioner of the Internal Revenue for each year in which such relationship exists, and shall provide such information as shall be specified in a reporting form prescribed by the Secretary to be filed by such persons. Persons having a financial interest in 25 or more foreign financial accounts need only note that fact on the form. Such persons will be required to provide detailed information concerning each account when so requested by the Secretary or his delegate.*

**31 CFR § 1010.306 Filing of reports:**

[Effective Mar. 1, 2011 and Formerly 31 C.F.R. § 103.27-See below]

*(c) Reports required to be filed by § 1010.350 shall be filed with the Commissioner of Internal Revenue on or before June 30 of each calendar year with respect to foreign financial accounts exceeding \$ 10,000 maintained during the previous calendar year.*

*(d) Reports required by § 1010.311, § 1010.313, § 1010.340, § 1010.350, § 1020.315, § 1021.311 or §*



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*1021.313 of this chapter shall be filed on forms prescribed by the Secretary. All information called for in such forms shall be furnished.*

*(e) Forms to be used in making the reports required by § 1010.311, § 1010.313, § 1010.350, § 1020.315, § 1021.311 or § 1021.313 of this chapter may be obtained from the Internal Revenue Service. Forms to be used in making the reports required by § 1010.340 may be obtained from the U.S. Customs and Border Protection.*

**HISTORY:** [75 FR 65806, Oct. 26, 2010]

**NOTES:** [EFFECTIVE DATE NOTE: 75 FR 65806, Oct. 26, 2010, added Chapter X, effective Mar. 1, 2011.]

**CROSS REFERENCE:** General Accounting Office: See 4 CFR Chapter I.

**31 C.F.R. § 103.27** – Provides FBAR filing rules, as follows:

**[Only Change - Renumbered under Chapter X as 31 CFR § 1010.306- See above]**

- (c) Reports required to be filed by Sec. 103.24 shall be filed with the Commissioner of Internal Revenue on or before June 30 of each calendar year with respect to foreign financial accounts exceeding \$10,000 maintained during the previous calendar year.*
- (d) Reports required by Sec. 103.22, Sec. 103.23 or Sec. 103.24 shall be filed on forms prescribed by the Secretary. All information called for in such forms shall be furnished.*
- (e) Forms to be used in making the reports required by Sec. 103.22 and 103.24 may be obtained from the Internal Revenue Service.*

**31 CFR § 1010.420 Records to be made and retained by persons having financial interests in foreign financial accounts:** [Effective Mar.1, 2011 and **Formerly 31 C.F.R. § 103.32-See below**]

*Records of accounts required by § 1010.350 to be reported to the Commissioner of Internal Revenue shall be retained by each person having a financial interest in or signature or other authority over any such account. Such records shall contain the name in which each such account is maintained, the number or other designation of such account, the name and address of the foreign bank or other person with whom such account is maintained, the type of such account, and the maximum value of each such account during the reporting period. Such records shall be retained for a period of 5 years and shall be kept at all times available for inspection as authorized by law. In the computation of the period of 5 years, there shall be disregarded any period beginning with a date on which the taxpayer is indicted or information instituted on account of the filing of a false or fraudulent Federal income tax return or failing to file a Federal income tax return, and ending with the date on which final disposition is made of the criminal proceeding.*

**HISTORY:** [75 FR 65806, Oct. 26, 2010]

**NOTES:** [EFFECTIVE DATE NOTE: 75 FR 65806, Oct. 26, 2010, added Chapter X, effective Mar. 1, 2011.]

**31 C.F.R. § 103.32** – Provides FBAR recordkeeping rules, as follows:

**[Only Change - Renumbered under Chapter X as 31 CFR § 1010.420 - See above]**

*Records of accounts required by Sec. 103.24 to be reported to the Commissioner of Internal Revenue shall be retained by each person having a financial interest in or signature or other authority over any such account. Such records shall contain the name in which each such account is maintained, the number or other designation of such account, the name and address of the foreign bank or other person with whom such account is maintained, the type of such account, and the maximum value of each such account during the*

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*reporting period. Such records shall be retained for a period of 5 years and shall be kept at all times available for inspection as authorized by law. In the computation of the period of 5 years, there shall be disregarded any period beginning with a date on which the taxpayer is indicted or information instituted on account of the filing of a false or fraudulent Federal income tax return or failing to file.*

#### **31 CFR § 1010.820 Civil penalty:**

[Effective Mar.1, 2011 and **Formerly 31 C.F.R. § 103.57 (g) and (h) -See below**]

*(g) For any willful violation committed after October 27, 1986, of any requirement of § 1010.350, § 1010.360 or § 1010.420, the Secretary may assess upon any person, a civil penalty:*

*(1) In the case of a violation of § 1010.360 involving a transaction, a civil penalty not to exceed the greater of the amount (not to exceed \$ 100,000) of the transaction, or \$ 25,000; and*

*(2) In the case of a violation of § 1010.350 or § 1010.420 involving a failure to report the existence of an account or any identifying information required to be provided with respect to such account, a civil penalty not to exceed the greater of the amount (not to exceed \$ 100,000) equal to the balance in the account at the time of the violation, or \$ 25,000.*

*(h) For each negligent violation of any requirement of this chapter, committed after October 27, 1986, the Secretary may assess upon any financial institution a civil penalty not to exceed \$ 500.*

**HISTORY:** [75 FR 65806, Oct. 26, 2010]

**NOTES:** [EFFECTIVE DATE NOTE: 75 FR 65806, Oct. 26, 2010, added Chapter X, effective Mar. 1, 2011.]

**CROSS REFERENCE:** General Accounting Office: See 4 CFR Chapter I.

**31 C.F.R. § 103.57(g) and (h)** – Provides FBAR civil penalty rules. This regulation had not yet been updated to reflect the new provisions of the non-willful and willful penalties under 31 U.S.C. § 5321(a)(5)(B) through (D). The prior rules are as follows:

**[Only Change - Renumbered under Chapter X as 31 CFR § 1010.820 - See above]**

*(g) For any willful violation committed after October 27, 1986, of any requirement of Sec. 103.24, Sec. 103.25, or Sec. 103.32, the Secretary may assess upon any person, a civil penalty:*

*(1) [Not applicable to FBAR]*

*(2) In the case of a violation of Sec. 103.24 or Sec. 103.32 involving a failure to report the existence of an account or any identifying information required to be provided with respect to such account, a civil penalty not to exceed the greater of the amount (not to exceed \$100,000) equal to the balance in the account at the time of the violation, or \$25,000.*

*(h) For each negligent violation of any requirement of this part, committed after October 27, 1986, the Secretary may assess upon any financial institution a civil penalty not to exceed \$500.*

**Taxpayer Position:** *(If applicable)*

**Taxpayer Name:**

**Examiner:**

**TIN:**

**Tax Form:**

**Date:**

**Tax Year:**

<b>FBAR Penalties; Post 10/22/2004; SB/SE E&amp;G Examiner Lead Sheet</b>
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