



# FBAR Penalty Case Workshop

## Part 2 of 2

Area FBAR Coordinators

(b) (6)

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You need to Allow the Evidence to Guide the FBAR Investigation. If the evidence tends to show willful conduct by the person, then continue to gather evidence to prove Willful FBAR violations; however, if the Evidence tends to show Non-Willfulness, then at some point during the FBAR Investigation you will shift the focus to evaluating whether the person has Reasonable Cause for the FBAR violations. At what point you have gathered enough information to make a decision about the direction of the FBAR Investigation heavily depends upon the facts of the case.

## **FBAR Penalty Case Steps**

- 1) Discover a potential FBAR violation in Title 26
- 2) **Secure a Related Statute Memorandum (RSM) in Title 31**
- 3) Establish the **2** FBAR Administrative Controls
- 4) Investigate the FBAR Penalty Case
  - Use the FBAR 4318 for Penalty Case Structure
- 5) Determine the Appropriate FBAR Penalty
- 6) **Document Penalty Decision** in a **Memorandum** to **Area Counsel** & **Attach 886A-Case Summary**
- 7) **Issue** Form 13449 (FBAR **RAR**) **only after** case file **reviewed** by FBAR Coordinators & FBAR Penalty **approved** by FBAR Area Counsel.
- 8) Close the case

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**The Ultimate Goal** -of the Revenue Agent in an FBAR Penalty Case File is to Complete Step 6)

The FBAR penalty case file is separate from the related income tax examinations or other Title 26 penalty cases. The FBAR penalty case and the income tax cases may follow separate processing paths so it is important to include in the FBAR penalty case copies of all the relevant information from the Title 26 case files, including information to show the amounts of the tax deficiencies, if any, related to the undisclosed accounts.

As with all cases, well organized and indexed workpapers are easier to follow. Also keep in mind that, if the FBAR penalty case goes to trial, your FBAR workpapers will be a very important part of the government's FBAR penalty case.

At the conclusion of the FBAR penalty investigation, if you propose an FBAR penalty, Counsel reviews your proposed FBAR penalties to determine whether the evidence you gathered is sufficient to sustain the penalties. It is the group manager and the examiner who determine the appropriate FBAR penalties to propose; the role of Counsel is to review the penalty decision and to provide an opinion on the whether the evidence supports the proposed penalty.

To assist Counsel in this task you prepare a memorandum with a case summary to summarize the evidence you gathered. The case summary can be in either bullet or narrative form, or a combination of the two forms. Often it is better to summarize the evidence using bullets, and then to use a narrative to explain how the evidence supports the proposed penalty assessments. **Case Memorandum Signed by GM.**

Do not use the FBAR lead sheet as a substitute for the case summary.

## **7 Elements Necessary To Prove In Any FBAR Court Case File**

- 1) **TP** was a **United States Citizen, Resident, or Person Doing Business** in the United States.
- 2) **TP** had a **Financial Interest** in, or **Signatory** or **Other Authority** over a **Bank, Securities** or **Other Financial Accounts** during the years in question.
- 3) **Bank** had **Balance > \$10,000** at **any time** in United States Dollars (USD).
- 4) **Bank** was **in a Foreign Country**.
- 5) **TP Failed** to **Disclose** the **Bank Account**.
- 6) **Failure** to **Report** was **Willful** or **Non-Willful**.
- 7) The **Penalty Amounts** were **Proper**.

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These **7 Elements** are outlined in the John McBride Case.

**We will discuss** these 7 Elements **Necessary to Prove in any FBAR Court Case later** when talk about **Case Summaries**.

## Penalty Determination

- **Possible Outcomes of an FBAR Penalty Case**
  - 1) No Violation
  - 2) Violation, No Penalties (Warning Letter)
  - 3) Violation with Penalties
- **Where there is a violation, must issue a warning letter or assert a penalty**
- **Do not discuss Penalty Decision with the TP until Counsel Reviews the Case File**
- **If warning letter only, consult FBAR Coordinator & document in activity record**

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It is not necessary to issue a warning letter when a penalty is asserted on 1 or more years. In all cases where there are FBAR violations but no penalties, you have to send the taxpayer an FBAR Warning letter (only after Consulting with the FBAR Coordinator).

For cases where there are no FBAR violations, prepare a case summary to explain your findings and why no FBAR penalties are proposed. If the FBAR lead sheet contains such a summary of findings, the examiner does not have to prepare a separate case summary.

To close the FBAR case, complete the FBAR monitoring document (FMD) to show the disposition of the case, update ERCS, assemble the FBAR case file, and send the closed case to Detroit.

If there is a violation, but no FBAR penalties are being proposed, **you and/or your manager should discuss the case with the FBAR coordinator.** The FBAR coordinator reviews the case summary to ensure you explained your decision not to assert FBAR penalties and explain the taxpayer's reasonable cause for the violation. While your manager makes the final decision whether to assert penalties, you and your manager should consider concerns or issues raised by the FBAR coordinator; document in the case activity record your discussion with the FBAR coordinator.

Send Letter 3800, *Warning Letter Respecting Foreign Bank and Financial Accounts report Apparent Violations*, to the taxpayer. This letter lists the FBAR violations discovered during the penalty investigation.

**Retain a copy of the Letter 3800 in the case file.**



## Maximum Statutory FBAR Civil Penalties

- For Willful Violations the FBAR Civil Penalty cannot exceed the greater of
  - \$100,000
  - 50% of the balance in the account at the time of the violation (June 30 of the following year)
- For Non-Willful Violations, the penalty cannot exceed \$10,000
- No FBAR Penalty is Imposed if
  - there is Reasonable Cause, **and**
  - Taxpayer files correct FBARs

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## NOTE!

**This will be demonstrated in an Willful Example Later in this workshop.**

These are the penalties which can be applied if the taxpayer does not meet the mitigation guideline criteria discussed later in the workshop.

[National Guidance is Coming that might change all or some of these Procedures.](#)

## **FBAR Civil Penalties**

- The **Statute** under Title 31 does **not define “Violation”**
- **Example:** for three years a person failed to file FBARs to report two accounts each year.  
Then the **Definition** of the **FBAR “Violation”**  
Could be **any** of the **following** using **Examiner Discretion:**
  - 6 Violations: one per account per year
  - 3 Violations: one per year for the unfiled FBAR
  - 1 Violation: one for the entire three-year period
- Flexibility to compute an appropriate Non-Willful penalty based upon the facts of the case
  - Strong indications of Willfulness but cannot prove Willfulness
  - Some Willful conduct, but not enough to assert Willful FBAR Penalty

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### **IRM 4.26.16.4.7 (07-01-2008)**

#### **FBAR Penalties - Examiner Discretion**

- (1) The examiner may determine that the facts and circumstances of a particular case do not justify asserting a penalty. If there was an FBAR violation but the examiner determines that a penalty is not appropriate, the examiner should issue the FBAR warning letter, [Letter 3800](#).
- (2) When a penalty is appropriate, IRS has established penalty mitigation guidelines to aid the examiner in applying penalties in a uniform manner. The examiner may determine that a penalty under these guidelines is not appropriate or that a lesser penalty amount than the guidelines would otherwise provide is appropriate or that the penalty should be increased (up to the statutory maximum). **The examiner must make such a determination with the written approval of the examiner’s manager and document the decision in the workpapers.**
- (3) Factors to consider when applying examiner discretion may include, but are not limited to, the following:
  - a. Whether compliance objectives would be achieved by issuance of a warning letter;
  - b. Whether the person who committed the violation had been previously issued a warning letter or has been assessed the FBAR penalty;
  - c. The nature of the violation and the amounts involved; and,  
The cooperation of the taxpayer during the examination.
- (4) **Given the magnitude of the maximum penalties permitted for each violation, the assertion of multiple penalties and the assertion of separate penalties for multiple violations with respect to a single FBAR form, should be considered only in the most egregious cases.**

**Exhibit 4.26.16-2 (07-01-2008)**

**Normal FBAR Penalty Mitigation Guidelines for Violations Occurring After October 22, 2004**

The Bank Secrecy Act (BSA) allows the Secretary of the Treasury some discretion in determining the amount of penalties for violations of the FBAR reporting and record keeping requirements. There is a penalty ceiling but no minimum amount. This discretion has been delegated to the FBAR examiner.

- The examiner may determine that the facts and circumstances of a particular case do not justify a penalty.
- If there was an FBAR violation but no penalty is appropriate, the examiner should issue the FBAR warning letter, Letter 3800.

When a penalty is appropriate, IRS has established penalty mitigation guidelines so that the penalties determined through the examiner's discretion are uniform. The examiner may determine that:

- A penalty under these guidelines is not appropriate, or
- A lesser amount than the guidelines would otherwise provide is appropriate.

The examiner must make this determination with the written approval of the examiner's manager. The examiner's workpapers must document the circumstances that make mitigation of the penalty under these guidelines appropriate. To qualify for mitigation, the person must meet four criteria:

1. The person has no history of criminal tax or BSA convictions for the preceding ten years and has no history of prior FBAR penalty assessments;
2. No money passing through any of the foreign accounts associated with the person was from an illegal source or used to further a criminal purpose;
3. The person cooperated during the examination; and,
4. IRS did not determine a fraud penalty against the person for an underpayment of income tax for the year in question due to the failure to report income related to any amount in a foreign account

The FBAR mitigation guidelines allow you to determine the appropriate FBAR penalty to assert based upon the facts and circumstances of the case.

**There is a Penalty Ceiling, but No Minimum Amount.**

The IRS adopted the FBAR mitigation guidelines to promote consistency by examiners and group managers when exercising their discretion for similarly-situated persons subject to possible FBAR penalties, so where appropriate examiners should use the penalty mitigation guidelines to compute FBAR penalties.

**Examiners may deviate from the guidelines where the facts of the case warrant either a lesser or greater penalty amount than the amount of the penalty computed using the mitigation guidelines. Where an examiner believes it is appropriate to deviate from the mitigation guidelines, the examiner must document the reasons for the deviation in the workpapers for the FBAR penalty case.**

The FBAR penalty mitigation guidelines are in IRM 4.26.16.4.6 and IRM Exhibit 4.26.16-2.

The group manager must approve, in writing, all FBAR penalty assessments, including mitigated FBAR penalties. **GM approval is documented on the memo to Counsel, as well as the FMD when case is closed.**

**Note!**

**We usually apply the Maximum Non-Willful FBAR Mitigation Penalty and Let Counsel advise if appropriate or not.**

### Mitigated FBAR Penalties

- **Guidelines Define** levels of **Penalties** based **upon** the **Account Balances**
  - **Willful:** Levels I, II, III, and IV
  - **Non-willful:** Levels I-NW, II-NW, and III-NW
- The **Level I's FBAR Penalties** are where the **Aggregate Balance** of **all accounts** does not exceed \$50,000
- **Where Level 1 does not apply,** **compute the** **FBAR Penalty Per Account (Emphasis Added),** **based** upon the **Highest Balance** in that account
- Levels IV (Willful) and III (Non-Willful) are the **Maximum Statutory FBAR Penalties**

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Maximum Aggregate Balance (MAB) = The Sum of Maximum Value in United States Dollars (USD) of Each Account for the Calendar Year

[Read Next Part at End if Time Permits \(Skip Now\)](#)

**For 2011 and later tax years,** if the taxpayer attaches **Form 8938, Statement of Foreign Financial Assets**, to his income tax return, and CBRS does not show that the taxpayer filed an FBAR, you may have an FBAR violation.

**Unmarried** X > 75,000 any time during year or \$ 50,000 last day of year.

**Married** X > 150,000 any time during year or \$100,000 last day of year.

**Married-Separate** X > 75,000 any time during year or \$ 50,000 last day of year.

You may be subject to a penalty if you fail to file a correct Form 8938 under Title 26 on time or if you have an understatement of tax or omission of income relating to a specified foreign financial asset.

**X = Value** at 12/31 by FMS (Financial Management Service exchange rate) in USD of Specified Foreign Financial Assets. ([Same Exchange Rate Spreadsheet can be used as FBAR for this computation](#)).

**Failure-to-File Penalty**

If you are required to file Form 8938 but do not file a complete and correct Form 8938 by the due date (including extensions), you may be subject to a penalty of \$10,000.

**Continuing Failure-to-File**

If you do not file a correct and complete Form 8938 within 90 days after the IRS mails you a notice of the failure to file, you may be subject to an additional penalty of \$10,000 for each 30 day period (or part of a period) during which you continue to fail to file Form 8938 after the 90-day period has expired. The maximum additional penalty for continuing failure to file Form 8938 is \$50,000.

Normal FBAR Penalty Mitigation Guidelines for Violations Occurring After October 22, 2004 - Per Person Per Year

Non-Willful (NW) Penalties

To Qualify for Level I-NW - Determine Aggregate Balances	If the maximum aggregate balance for all accounts to which the violations relate did not exceed \$50,000 at any time during the year, Level I – NW applies to all violations. Determine the maximum balance at any time during the calendar year for each account. Add the individual maximum balances to find the maximum aggregate balance.
Level I-NW Penalty is	\$500 for each violation, not to exceed an aggregate penalty of \$5,000 for all violations.
To Qualify for Level II-NW - Determine Account Balance	If Level I-NW does not apply and if the maximum balance of the account to which the violations relate at any time during the calendar year did not exceed \$250,000, Level II-NW applies to that account.
Level II-NW Penalty is	\$5,000 for each Level II-NW account violation, not to exceed 10% of the maximum balance in the account during the year
To Qualify for Level III-NW	If Level I-NW does not apply and if the maximum balance of the account to which the violations relate at any time during the calendar year was more than \$250,000, Level III-NW applies to that account.
Level III-NW is	\$10,000 for each Level III-NW account violation, the statutory maximum for non-willful violations.

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Exhibit 4.26.16-2

Internal Revenue Manual

Cat. No. 39110X (07-01-2008)

**Maximum Aggregate Balance (MAB)**= The **Sum** of **Maximum Value** in United States Dollars (**USD**) of **Each Account** for the **Calendar Year**.

The **MAB Determines** the Level of **Non-Willful** and **Willful** **FBAR Penalty** being **Assessed** for **Levels 1 and 2 ONLY**:

[X = Highest Balance of Foreign Account During the Calendar Year]

**Level 1** (MAB < \$50,000)

**Level 2** (MAB < \$250,000 and > \$50,000) for all Foreign Accounts.

**Level 3** (X > \$250,000)

**Level 3 is Applicable ONLY** to each and **Every Account X > \$250,000**; however, **Other Accounts** not over \$250,000 would use the Maximum Aggregate Balance (**MAB**) of All accounts during the Calendar Year to Determine the non-willful or willful **FBAR level Penalty** for each of those **separate** Foreign Accounts, which **Would Always Be Level 2** once Level 3 Penalty (balance > \$250,000) is **reached on any account** based upon the Maximum Aggregate Balance (MAB), then it cannot become level 1 FBAR penalty.



**MAB** (Maximum Aggregate Balance) **Determines** The **Level 1 or Level 2 FBAR Penalty Both** Willful or Non-Willful

**For Example**, If you have 2 Foreign Accounts in USD Non-Willful:

- Account 1---\$300,000--Maximum Balance Per Account CY
- Account 2---\$ 40,000--Maximum Balance Per Account CY
- MAB-----\$340,000--(\$300,000 Plus \$40,000)

Then the Account 1 Per Account Balance would be a Level 3 NW Penalty being over \$250,000; however, the MAB would make Account 2 at a Level 2 NW Penalty even though its Per Account Balance is only \$40,000, which would seem to be a Level 1 Penalty (being Less than \$50,000), **but once** the **MAB makes** the **FBAR Penalty** a **Level 2**, then it **cannot become** a **Level 1** Penalty even if the Per Account Balance is Less than \$50,000.

A Later Spreadsheet Example will Demonstrate this point in other numbers that hopefully make sense.

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**For Example**, If you have 2 Foreign Accounts in USD Non-Willful:

Account 1-\$300,000-Maximum Balance Per Account CY

Account 2-\$ 40,000-Maximum Balance Per Account CY

MAB-----\$340,000 (\$300,000 Plus \$40,000)

Then the Account 1 Per Account Balance would be a Level 3 NW Penalty being over \$250,000; however, the MAB would make Account 2 at a Level 2 NW Penalty even though its Per Account Balance is only \$40,000, which would seem to be a Level 1 Penalty (being Less than \$50,000), **but once** the **MAB makes** the **FBAR Penalty** a **Level 2**, then it **cannot become** a **Level 1** Penalty even if the Per Account Balance is Less than \$50,000.

A Later Spreadsheet Example will Demonstrate this point in other numbers that hopefully make sense.



Type	Name	Modified	Modified By
	2012 SBSE RA CPE FBAR Self Study Guide	1/16/2013 10:45 AM	(b) (6)
	Closing FBAR Case due to Statute when Other Years Remain Open	2/15/2013 3:37 PM	
	Documents to support willful violation of FBAR penalty	1/16/2013 10:24 AM	
	FBAR OVDI Treaty Workshops 2012 Final 2012-05 (JCM)	4/22/2013 1:00 PM	
	FBAR Penalty Interview Techniques (Revision6252013)	6/25/2013 10:56 AM	
	FBAR Penalty Mitigation Comps After 10222004 Willful and Non-Willful Revision 6192013	6/19/2013 2:18 PM	
	FBAR_Reasonable Cause + More- Part of 400 Workpaper-Argument Section (05062013)	5/20/2013 4:20 PM	
	IDRS Citizenship Info	1/16/2013 10:24 AM	
	Official exch rates revised 1282013	1/28/2013 4:34 PM	
	Willful Blindness	4/8/2013 8:43 AM	

**First**, we are going to do a Non-Willful FBAR Penalty Example using and demonstrating the Official exch rates revised 1282013.xls Spreadsheet found in the FBAR LIBRARY Website.

**Remember!**

**Per IRM 4.26.16.3.6** the IRS Must Use the Historical Rates at 12/31 each year contained in these spreadsheets for FBAR Penalties from the Financial Management Service (FMS) at <http://fms.treas.gov/int.html>

**Secondly**, we are going to do a Non-Willful FBAR Penalty Example using and Demonstrating the FBAR Penalty Mitigation Comps After 10222004 Willful and Non-Willful Revision 5292013.xls Spreadsheet found in the FBAR LIBRARY Website.

**Finally**, we are going to do a Willful FBAR Penalty Example using and Demonstrating the FBAR Penalty Mitigation Comps After 1022204 Willful and Non-Willful Revision 5292013.xls Spreadsheet found in the FBAR LIBRARY Website.

**Facts for Non-Willful FBAR Example**

**3 Foreign Accounts Exist in 2011 with Highest Balances in their Foreign Currency During the Calendar Year Are The Following:**

**Foreign Account 1 -British Pounds (GBP)--35,035**

**Foreign Account 2 -EUROS----- 9,945**

**Foreign Account 3 -Swiss Francs (CHF)----- 1,870**

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This Example will Demonstrate the Use of the **Official Exch rates revised 1282013**

**Spreadsheet.xls** designed by FBAR Coordinator (b) (6)

(b) (6) to easily convert most foreign currencies into USD using the same facts as Level 2 Non-Willful Mitigation Example in 2012 CPE.

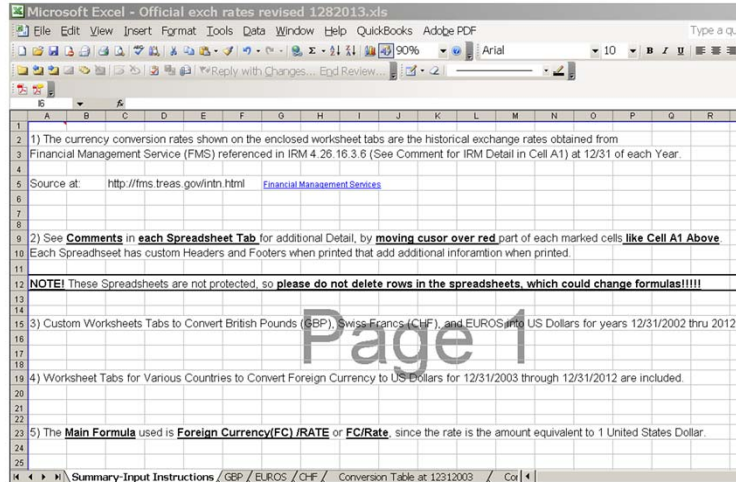
The **currency conversion rates** shown on the enclosed worksheet tabs are the **historical exchange rates** obtained from **Financial Management Service (FMS)** referenced in **IRM 4.26.16.3.6**

(See Comment for IRM Detail in Cell A1) at 12/31 of each Year.

Source at: <http://fms.treas.gov/intn.html>

35,035 (British Pounds (GBP) AKA United Kingdom Pound Sterling = \$55,000  
9,945 (Euros) AKA Euro Zone Euro = \$13,000  
1,870 Swiss Francs (CHF) AKA Switzerland Franc = \$ 2,000

## Official Exch rates revised 1282013 Spreadsheet



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### Open the Official Exch rates revised 1282013 Spreadsheet and Explain

- 1) The **currency conversion rates** shown on the enclosed worksheet tabs are the **historical exchange rates** obtained from **Financial Management Service (FMS)** referenced in **IRM 4.26.16.3.6**  
(See Comment for IRM Detail in Cell A1) at 12/31 of each Year.  
Source at: <http://fms.treas.gov/intn.html>
- 2) See **Comments in each Spreadsheet Tab** for additional Detail, by moving cursor over red part of each marked cells like Cell A1 Above.  
**Each Spreadsheet has custom Headers and Footers** when printed that add additional information when printed.  
**NOTE! These Spreadsheets are not protected, so please do not delete rows in the spreadsheets, which could change formulas!!!!**
- 3) **Custom Worksheets Tabs to Convert** British Pounds (GBP), Swiss Francs (CHF), and EUROS into US Dollars for years **12/31/2002 thru 2012.**
- 4) **Worksheet Tabs for Various Countries** to Convert Foreign Currency to US Dollars for 12/31/2003 through 12/31/2012 are included.

## Official Exch rates revised 1282013 Spreadsheet

C22			
A	B	C	D
	United States Treasury Foreign Currency (FC) Exchange Rates	Input - British Pounds (GBP)	Output - United States (US) Dollars
1		Amount	Amount
2	Years	(FC) To \$1.00	
3			
4	12/31/2002	0.6210	\$0.00
5			
6	12/31/2003	0.5660	\$0.00
7			
8	12/31/2004	0.5240	\$0.00
9			
10	12/31/2005	0.5820	\$0.00
11			
12	12/31/2006	0.5120	\$0.00
13			
14	12/31/2007	0.4860	\$0.00
15			
16	12/31/2008	0.6570	\$0.00
17			
18	12/31/2009	0.6160	\$0.00
19			
20	12/31/2010	0.6400	\$0.00
21			
22	12/31/2011	0.6370	\$0.00
23			
24	12/31/2012	0.6180	\$0.00
25			
26			
27			

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Summary-Input Instructions \ GBP / EUROS / CHF / Conversion Table at 12312003

Go to the **Official Exch rates revised 1282013 Spreadsheet** -GBP  
Tab - Cell C22

**Official Exch rates revised 1282013 Spreadsheet**

	A	B	C	D
1		United States Treasury Foreign Currency (FC) Exchange Rates	Input - British Pounds (GBP)	Output - United States (US) Dollars
2	Years	(FC) To \$1.00	Amount	Amount
3				
4	12/31/2002	0.6210		\$0.00
5				
6	12/31/2003	0.5660		\$0.00
7				
8	12/31/2004	0.5240		\$0.00
9				
10	12/31/2005	0.5820		\$0.00
11				
12	12/31/2006	0.5120		\$0.00
13				
14	12/31/2007	0.4860		\$0.00
15				
16	12/31/2008	0.6570		\$0.00
17				
18	12/31/2009	0.6160		\$0.00
19				
20	12/31/2010	0.6400		\$0.00
21				
22	12/31/2011	0.6370	35035.0000	\$55,000.00
23				
24	12/31/2012	0.6180		\$0.00
25				
26				
27				

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Summary-Input Instructions \ GBP / EUROS / CHF / Conversion Table at 12312003

Go to the **Official Exch rates revised 1282013 Spreadsheet**

1) **Enter** into GBP Tab - **Cell C22**---35,035 British Pounds aka United Kingdom Pound Sterling, which Converts into \$55,000 USD.

### **Facts for Non-Willful FBAR Example**

**3 Foreign Accounts** Exist **in 2011** with **Highest Balances** in their **Foreign Currency** During the **Calendar Year** Are The Following:

**Foreign Account 1 -British Pounds (GBP)--35,035**

**Foreign Account 2 -EUROS----- 9,945**

**Foreign Account 3 -Swiss Francs (CHF)----- 1,870**

## Official Exch rates revised 1282013 Spreadsheet

	A	B	C	D
1		United States Treasury Foreign Currency (FC) Exchange Rates	Input - EURO	Output - United States(US) Dollars
2	Years	(FC) To \$1.00	Amount	Amount
3				
4	12/31/2002	0.9550		\$0.00
5				
6	12/31/2003	0.8060		\$0.00
7				
8	12/31/2004	0.7530		\$0.00
9				
10	12/31/2005	0.8470		\$0.00
11				
12	12/31/2006	0.7590		\$0.00
13				
14	12/31/2007	0.6800		\$0.00
15				
16	12/31/2008	0.7310		\$0.00
17				
18	12/31/2009	0.6950		\$0.00
19				
20	12/31/2010	0.7700		\$0.00
21				
22	12/31/2011	0.7650		\$0.00
23				
24	12/31/2012	0.7590		\$0.00
25				
26				
27				

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Go to the **Official Exch rates revised 1282013 Spreadsheet** -  
EUROS Tab - Cell C22



## Official Exch rates revised 1282013 Spreadsheet

Years	United States Treasury Foreign Currency (FC) Exchange Rates (FC) To \$1.00	Input - EURO Amount	Output - United States(US) Dollars Amount
12/31/2002	0.9550		\$0.00
12/31/2003	0.8060		\$0.00
12/31/2004	0.7530		\$0.00
12/31/2005	0.8470		\$0.00
12/31/2006	0.7590		\$0.00
12/31/2007	0.6800		\$0.00
12/31/2008	0.7310		\$0.00
12/31/2009	0.6950		\$0.00
12/31/2010	0.7700		\$0.00
12/31/2011	0.7650	9945.0000	\$13,000.00
12/31/2012	0.7590		\$0.00

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Go to the Official Exch rates revised 1282013 Spreadsheet

1) **Enter** into EUROS Tab - Cell C22---9,945 EUROS, which Converts into \$13,000 USD.

### Facts for Non-Willful FBAR Example

**3 Foreign Accounts** Exist in **2011** with **Highest Balances** in their **Foreign Currency** During the **Calendar Year** Are The Following:

**Foreign Account 1 -British Pounds (GBP)--35,035**

**Foreign Account 2 -EUROS----- 9,945**

**Foreign Account 3 -Swiss Francs (CHF)----- 1,870**

**Official Exch rates revised 1282013 Spreadsheet**

	A	B	C	D
		United States Treasury Foreign Currency (FC)	Input - Swiss Francs (CHF)	Output - United States(US) Dollars
1				
2	Years	(FC) To \$1.00	Amount	Amount
3				
4	12/31/2002	1.3860		\$0.00
5				
6	12/31/2003	1.2760		\$0.00
7				
8	12/31/2004	1.1400		\$0.00
9				
10	12/31/2005	1.3170		\$0.00
11				
12	12/31/2006	1.2260		\$0.00
13				
14	12/31/2007	1.1280		\$0.00
15				
16	12/31/2008	1.0980		\$0.00
17				
18	12/31/2009	1.0310		\$0.00
19				
20	12/31/2010	1.0000		\$0.00
21				
22	12/31/2011	0.9350		\$0.00
23				
24	12/31/2012	0.9160		\$0.00
25				
26				
27				

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Go to the **Official Exch rates revised 1282013 Spreadsheet** -CHF Tab - Cell C22

## Official Exch rates revised 1282013 Spreadsheet

Years	United States Treasury Foreign Currency (FC) (FC) To \$1.00	Input Swiss Francs (CHF) Amount	Output United States(US) Dollars Amount
12/31/2002	1.3860		\$0.00
12/31/2003	1.2760		\$0.00
12/31/2004	1.1400		\$0.00
12/31/2005	1.3170		\$0.00
12/31/2006	1.2260		\$0.00
12/31/2007	1.1280		\$0.00
12/31/2008	1.0980		\$0.00
12/31/2009	1.0310		\$0.00
12/31/2010	1.0000		\$0.00
12/31/2011	0.9350	1870.0000	\$2,000.00
12/31/2012	0.9160		\$0.00

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Go to the **Official Exch rates revised 1282013 Spreadsheet**

1) **Enter** into CHF Tab - **Cell C22**---1,870 Swiss Francs, which Converts into \$2,000 USD.

### Facts for Non-Willful FBAR Example

**3 Foreign Accounts** Exist **in 2011** with **Highest Balances** in their **Foreign Currency** During the **Calendar Year** Are The Following:

**Foreign Account 1 -British Pounds (GBP)--35,035**

**Foreign Account 2 -EUROS----- 9,945**

**Foreign Account 3 -Swiss Francs (CHF)----- 1,870**

## Official Exch rates revised 1282013 Spreadsheet

United States Treasury Currency Conversion Table at 12/31/2011			
COUNTRY-CURRENCY	Foreign Currency (FC) Equivalents to One United States (US) Dollar	Input Foreign Currency (FC) Amount	Output United States (US) Dollars Amount
AFGHANISTAN - AFGHANI	48.2000		\$0.00
ALBANIA - LEK	105.3700		\$0.00
ALGERIA - DINAR	75.0360		\$0.00
ANGOLA - KWANZA	95.0000		\$0.00
ANTIGUA - BARBUDA - E. CARIBBEAN DOLLAR	2.7000		\$0.00
ARGENTINA-PESO	4.2880		\$0.00
ARMENIA - DRAM	380.0000		\$0.00
AUSTRALIA - DOLLAR	0.9840		\$0.00
AUSTRIA - EURO	0.7650		\$0.00
AZERBAIJAN - MANAT	0.8000		\$0.00
BAHAMAS - DOLLAR	1.0000		\$0.00
BAHRAIN - DINAR	0.3770		\$0.00
BANGLADESH - TAKA	79.0000		\$0.00
BARBADOS - DOLLAR	2.0200		\$0.00
BELARUS - RUBLE	8300.0000		\$0.00
BELGIUM-EURO	0.7650		\$0.00
BELIZE - DOLLAR	2.0000		\$0.00
BENIN - CFA FRANC	501.7300		\$0.00
BERMUDA - DOLLAR	1.0000		\$0.00
BOLIVIA - BOLIVIANO	6.8600		\$0.00

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Go to the Official Exch rates revised 1282013 Spreadsheet

- 1) Go to Conversion Table at 12/31/2011 Tab and Show
- 2) Enter Cell C61-----9,945 (Euro Zone- Euro)
- 3) Enter Cell C165-----1,870 (Switzerland Franc)
- 4) Enter Cell C180-----35,035 (United Kingdom-Pound Sterling)

### Facts for Non-Willful FBAR Example

3 Foreign Accounts Exist in 2011 with Highest Balances in their Foreign Currency During the Calendar Year Are The Following:

Foreign Account 1 -British Pounds (GBP)--35,035

Foreign Account 2 -EUROS----- 9,945

Foreign Account 3 -Swiss Francs (CHF)----- 1,870

## **Level 2 Non-willful Mitigation Example**

- Facts: for 2011 the person failed to report three accounts
- Facts: maximum balance of each account:
  - Account 1: \$55,000
  - Account 2: \$13,000
  - Account 3: \$2,000
  - Maximum aggregate balance: \$70,000
- Level 2 non-willful FBAR penalty per account:
  - Account 1: \$5,000
  - Account 2: \$1,300 (\$13,000 x 10%)
  - Account 3: \$200
  - Total FBAR penalty: \$6,500

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[Just Read the slide-Rest At the End](#)

**The facts of the case are that for 2011 a person failed to report all three of his foreign accounts.** The maximum balance of account number 1 was \$55,000, the maximum balance of account number 2 was \$13,000, and the maximum balance of the account number 3 was \$2,000. The maximum aggregate balance, which is determined by adding together the maximum balance of each of the three accounts, is \$70,000. **Since the maximum aggregate balance for this person exceeded \$50,000 the person does not meet the criteria for Level 1 non-willful FBAR penalty mitigation.**

Assuming the person meets all four mitigation criteria, Level 2 non-willful FBAR penalty mitigation is appropriate for each of the three accounts because the maximum balance of each account does not exceed \$250,000.

Under the Level 2 FBAR non-willful penalty mitigation guidelines, the FBAR penalty is the lesser of \$5,000 per violation or ten percent of the maximum balance in each account. In our example, the penalty for account number 1 is \$5,000, because ten percent of the \$55,000 maximum balance in the account, which is \$5,500, exceeds \$5,000. The penalty for account number 2 is \$1,300, because ten percent of the maximum balance of the account is less than \$5,000 (ten percent of \$13,000 is \$1,300). The penalty for account number 3 is \$200, which is ten percent of the maximum balance in the account (ten percent of \$2,000 is \$200).

Therefore, in this example, the total FBAR penalties using the Level 2 non-willful mitigation guidelines is \$6,500.

**FBAR Penalty Mitigation Comps After 10222004  
Willful and Non-Willful Revision 6192013 Spreadsheet**

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O
1	<b>NOTES: See all The TABS in This Spreadsheet</b>														
3	1) The Input Account Balance in Column E is the Maximum Per Account Balance for the Foreign Account During the Calendar Year.														
5	2) Attached in 2 Spreadsheet TABS is IRM Exhibit 4.26.16-2, which fully explains how to compute both the Normal Willful and Non-Willful FBAR Penalties with Mitigation Guidelines for Violations After October 22, 2004.														
8	3) Spreadsheets in TABS to help determine both the Normal Willful and Non-Willful FBAR Penalties with Mitigation Guidelines for Violations After October 22, 2004 are available for 2005, 2006, 2007, 2008, 2009, 2010, 2011, and 2012.														
11	4) Non-Willful 2012 CPE Examples of FBAR Penalties for Levels 2 and 3 are included in the Attached TABS.														
13	5) Willful 2012 CPE Examples of FBAR Penalties for Levels 1, 2, 3, and 4 are included in the Attached TABS.														
15	6) To Get the Correct Per Account Levels 1, 2, 3, or 4 Penalties on Willful and Non-Willful FBAR Penalties It will be Necessary to adapt (change) the spreadsheet by Inserting Additional Rows (with each Per Account Balance) and Copying the Formulas for Bank Accounts > One Account for Every Willful and Non-Willful FBAR Penalties.														
19	7) The ONLY Exception to this is the Non-Willful Level 1 FBAR Penalty, which is correct based upon entering the Maximum Aggregate Balance (MAB) in Column E and # Violations.														
22	8) Maximum Aggregate Balance (MAB) = Adding Together the Maximum Balance during the Calendar Year of All Accounts. If Maximum Aggregate Balance (MAB) > \$50,000. Then Any Level 2 Penalty is Applicable to All Accounts Even less than \$50,000.														
25	9) Take Note and Care!!! To USE the Maximum Aggregate Balance (MAB) in Determining Any Level 2 Willful and Non-Willful FBAR Penalties														
27	10) Any FBAR Spreadsheet Computation Questions?														
28	Then Call Your Area FBAR Coordinator Shown in the Attached Worksheet Tab.														

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- 1) **Open** the **FBAR Penalty Mitigation Comps** After 10222004 Willful and Non-Willful Revision 6192013.xls- **Spreadsheet**
- 2) **Read** them the Notes Tab (**10 Notes About Spreadsheet**). **Emphasize 7) and 8).**
- 3) **Show** them around the **Other TABS** briefly explaining each TAB .
  - 1) Willful IRM Exhibit 4.26.16-2
  - 2) Non-Willful IRM Exhibit 4.26.16-2
  - 3) Non-Willful Level 2 2012-FBAR CPE Example
  - 4) Non-Willful Level 3 2012-FBAR CPE Example
  - 5) Willful Level 1 2012-FBAR CPE Example
  - 6) Willful Level 2 2012-FBAR CPE Example
  - 7) Willful Level 3 2012-FBAR CPE Example
  - 8) Willful Level 4 2012-FBAR CPE Example
  - 9) Mitigation Criteria
  - 10) Area FBAR Coordinators



<b>FBAR Penalty Mitigation Comps After 10222004</b> <b>Willful and Non-Willful Revision 6192013 Spreadsheet</b> <b>Non-Willful Level 2 Example</b>								
A	B	C	D	E	F	G	H	I
FBAR								
FBAR Penalty Mitigation Guidelines After October 22, 2004								
Notes	FBAR Non-Willful Penalties	Account Balance	Per Account Penalty Structure	Maximum Per Account Balance in USD During the Calendar Year	FBAR Filing Date, Account Balance in USD	# of Violations	Computed Penalties Amount	Notes!
Level I	Level I - Maximum Aggregate Balance (MAB) of the Account < \$50,000	\$500 for each violation, not to exceed an aggregate penalty of \$5,000		\$0.00	Not Applicable	0	\$	See Level I Note Below
Level II	Level II - Maximum Aggregate Balance (MAB) of the Account < \$250,000	\$5,000 for each violation, not to exceed 10% of the maximum balance in the account during the year		\$0.00	Not Applicable	0	\$	See Level II Note Below
Level III	Level III - Maximum Balance Per Account > \$250,000	\$10,000 for each violation		\$0.00	Not Applicable	0	\$	See Level III Note Below
Total Non-Willful FBAR Penalty							\$	
Notes	FBAR Willful Penalties	Account Balance	Per Account Penalty Structure	Maximum Per Account Balance in USD During the Calendar Year	FBAR Filing Date, Account Balance in USD	# of Violations	Computed Penalties Amount	Notes!
Level I	Level I - Maximum Aggregate Balance (MAB) of the Account < \$50,000	The greater of \$1,000 for each violation or 5% of the maximum balance in the account during the year		\$0.00	Not Applicable	0	\$	See Level I Note Below
Level II	Level II - Maximum Aggregate Balance (MAB) of the Account < \$250,000	The greater of \$5,000 for each violation or 10% of the maximum balance in the account during the year		\$0.00	Not Applicable	0	\$	See Level II Note Below
Level III	Level III - Maximum Balance Per Account > \$250,000 but < \$1,000,000	The Per Account Penalty is the greater of 10% of the maximum balance during the year or 50% of the account balance in the account as of the last day for filing the FBAR (EOPF following Year)		\$0.00	\$0.00	0	\$	See Level III Note Below
Level IV	Level IV - Maximum Balance Per Account > \$1,000,000	The greater of \$100,000 or 50% of the closing balance in the account as of the last day for filing the FBAR (EOPF following Year)		\$0.00	\$0.00	0	\$	See Level IV Note Below
Total Willful FBAR Penalty							\$	
Level I Note: Non-Willful Penalty is Computed Correctly on Multiple Violations by INPUTTING Maximum Aggregate Balance (MAB) in Column C, Cell E8, Instead of Maximum Per Account Balance.								
Level II Note: Once the Maximum Aggregate Balance (MAB) > \$50,000, Then Any Level II Penalty is applicable to each, or every, and All Accounts.								
Maximum Aggregate Balance (MAB) = Sum of all the Maximum Balances during the Calendar Year for All Accounts.								
Level III Note: The Per Account Penalty is the > of 10% Maximum Balance During the Calendar Year or 50% of the Closing Balance as of June 30th in the Following Year.								
Level IV Note: For Level IV Willful FBAR Penalty Only Use the > \$100,000 or 50% of the Closing Balance as of June 30th in the Following Year.								

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- 1) **Open the FBAR Penalty Mitigation Comps After 10222004 Willful and Non-Willful Revision 6192013.xls- Spreadsheet**
- 2) **Go to the 2011 TAB**
- 3) **Enter in Cell E9 “\$70,000” and Cell G9 “1” and Explain they get the wrong answer of \$5,000 FBAR Penalty by entering the Maximum Aggregate Balance (MAB).**

### Level 2 Non-Willful Mitigation Example

- Facts: for 2011 the person failed to report three accounts
- Facts: maximum balance of each account:
  - Account 1: \$55,000
  - Account 2: \$13,000
  - Account 3: \$2,000
  - Maximum aggregate balance: \$70,000
- Level 2 non-willful FBAR penalty per account:
  - Account 1: \$5,000
  - Account 2: \$1,300 (\$13,000 x 10%)
  - Account 3: \$200
- Total FBAR penalty: \$6,500

<b>FBAR Penalty Mitigation Comps After 10222004            Willful and Non-Willful Revision 6192013 Spreadsheet            Non-Willful Level 2 Example</b>									
E9									
	A	B	C	D	E	F	G	H	
1									
2	FBAR								
3									
4									
5	FBAR Penalty Mitigation Guidelines After October 22, 2004								
6									
7	Notes	FBAR Non-Willful Penalties	Account Balance	Per Account Penalty Structure	Maximum Per Account Balance in USD During The Calendar Year	\$/Yr Following Year FBAR Filing Date	# of Violations	Computed Penalty Amount	Notes!
8	Note 1)	Level I - Maximum Aggregate Balance (MAB) of the Accounts < \$50,000	\$500 for each violation, not to exceed an aggregate penalty of \$5,000		\$0.00	Not Applicable	0	\$	See Level I Note Below Input (MAB) in Column F, Cell E8 and # of Violations
9	Note 2)	Level II - Maximum Aggregate Balance (MAB) of the Account < \$250,000	\$5,000 for each violation, not to exceed 10% of the maximum balance in the account during the year		\$70,000.00	Not Applicable	1	\$ 5,000	See Level II Note! Below Input # of Violations
10	Note 3)	Level III - Maximum Balance Per Account > \$250,000	\$10,000 for each violation		\$0.00	Not Applicable	0	\$	
11									
12						Total Non-Willful FBAR Penalty		\$ 5,000	
13									

- 1) Open the FBAR Penalty Mitigation Comps After 10222004 Willful and Non-Willful Revision 6192013.xls-Spreadsheet
- 2) Go to the 2011 TAB
- 3) Enter in Cell E9 “\$70,000” and Cell G9 “1” and Explain they get the wrong answer of \$5,000 FBAR Penalty by entering the Maximum Aggregate Balance (MAB).
- 4) THE Maximum Aggregate Balance (MAB) Determines ONLY the Level 1 or Level 2 Willful or Non-Willful FBAR Penalty; However, The Penalty is Based Upon Each Individual Account Balance in USD.



# FBAR Penalty Mitigation Comps After 10222004 Willful and Non-Willful Revision 6192013 Spreadsheet

## Non-Willful Level 2 Example

The screenshot shows a Microsoft Excel spreadsheet titled "FBAR Penalty Mitigation Comps After 10222004 Willful and Non-Willful Revision 6192013.xls". The spreadsheet is divided into sections for "FBAR Non-Willful Penalties" and "FBAR Willful Penalties".

**FBAR Non-Willful Penalties Table:**

Per Account Penalty Structure	Maximum Per Account Balance in USD During The Calendar Year	FBAR Filing Date, Account Balance in USD	# of Violations	Computed Penalty Amount	Notes!
\$500 for each violation, not to exceed an aggregate penalty of \$5,000	\$0.00	Not Applicable	0	\$	See Level I Note Below Input (MAD) in Column C, Cell E8.
\$5,000 for each violation, not to exceed 10% of the maximum balance in the account during the year	\$55,000.00	Not Applicable	1	\$ 5,000	See Level II Note Below Input # of Violations
\$10,000 for each violation	\$0.00	Not Applicable	0	\$	
Total Non-Willful FBAR Penalty				\$ 5,000	

**FBAR Willful Penalties Table:**

Account Balance	Per Account Penalty Structure	Maximum Per Account Balance in USD During The Calendar Year	FBAR Filing Date, Account Balance in USD	# of Violations	Computed Penalty Amount	Notes!
Level I - Maximum Aggregate Balance(MAB) of the Account < \$50,000	The greater of \$1,000 for each violation or 5% of the maximum balance in the account during the year	\$0.00	Not Applicable	0	\$	See Level I Note Below
Level II - Maximum Aggregate Balance(MAB) of the Account < \$250,000	The greater of \$5,000 for each violation or 10% of the maximum balance in the account during the year	\$0.00	Not Applicable	0	\$	See Level II Note Below
Level III - Maximum Balance Per Account > \$250,000 but < \$1,000,000	The Per Account Penalty is the greater of 10% of the maximum balance during the year or 50% of the account balance in the account as of the last day for filing the FBAR (6/29th following Year)	\$0.00	\$0.00	0	\$	See Level III Note Below
Level IV - Maximum Balance Per Account > \$1,000,000	The greater of \$100,000 or 50% of the closing balance in the account as of the last day for filing the FBAR (6/29th following Year)	\$0.00	\$0.00	0	\$	See Level IV Note Below
Total Willful FBAR Penalty				\$		

Notes at the bottom of the spreadsheet:

- Level I - Note! Non-Willful Penalty is Computed Correctly on Multiple Violations by INPUTTING Maximum Aggregate Balance (MAB) in Column C, Cell E8, instead of Maximum Per Account Balance.
- Level II - Note! Once the Maximum Aggregate Balance (MAB) > \$50,000, Then Any Level II Penalty is applicable to each, or every, and All Accounts. Maximum Aggregate Balance (MAB) = Sum of all the Maximum Balances during the Calendar Year for All Accounts.
- Level III - Note! The Per Account Penalty is the 10% Maximum Balance During the Calendar Year or 50% of the Closing Balance as of June 30th in the Following Year.
- Level IV - Note! For Level IV Willful FBAR Penalty Only Use the > \$100,000 or 50% of the Closing Balance as of June 30th in the Following Year.

- 1) **Left Click** Row 10
- 2) Go to Top Line Menu and **Select Insert- Row**
- 3) **Left Click** Row 11
- 4) Go to Top Line Menu and **Select Insert a 2<sup>nd</sup> Row**



**FBAR Penalty Mitigation Comps After 10222004  
Willful and Non-Willful Revision 6192013 Spreadsheet  
Non-Willful Level 2 Example**

The screenshot shows an Excel spreadsheet with the following data points visible in the table:

Level	Ex. Account Penalty Structure	Maximum Exc. Account Balance in USD During the Calendar Year	EF201 Following Year, FBAR Filing Date, Account Balance in USD	# of Violations	Computed Penalty Amount	Notes
Level I	\$500 for each violation, not to exceed an aggregate penalty of \$5,000	\$0.00	Not Applicable	0	\$	See Level I Note Below
Level II	\$2,000 for each violation, not to exceed an aggregate penalty of \$10,000	\$0.00	Not Applicable	0	\$	See Level II Note Below
Level III	The greater of \$1,000 for each violation or 5% of the maximum balance in the account during the year	\$0.00	Not Applicable	0	\$	See Level III Note Below
Level IV	The greater of \$100,000 or 5% of the closing balance in the account as of the last day for filing the FBAR (EF201 following Year)	\$0.00	Not Applicable	0	\$	See Level IV Note Below
Total Non-Willful FBAR Penalties					\$	5,000

The context menu is open over cell A10, showing options: Paste, Paste Special, Paste as hyperlink, Fill, Clear, Delete, Delete Sheet, Move or Copy Sheet..., Find..., Replace..., Go To..., Links..., Object.

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- 1) **Left Click** and **Highlight Cells A10 and A11**  
(Both Rows)
- 1) Go to Top Line Menu **Select "Edit" Then "Paste"**



<b>FBAR Penalty Mitigation Comps After 10222004</b> <b>Willful and Non-Willful Revision 6192013 Spreadsheet</b> <b>Non-Willful Level 2 Example</b>									
E10    \$ 55,000									
A	B	C	D	E	F	G	H	I	
1									
2	FBAR								
3									
4									
5	FBAR Penalty Mitigation Guidelines After October 22, 2004								
6									
Notes	FBAR Non-Willful Penalties	Account Balance	Per Account Penalty Structure	Maximum Per Account Balance in USD During The Calendar Year	6/30/ Following Year FBAR Filing Date Account Balance in USD	# of Violations	Computed Penalty Amount	Notes!	
Note 1)		Level I - Maximum Aggregate Balance (MAB) of the Accounts < \$50,000	\$500 for each violation, not to exceed an aggregate penalty of \$5,000	\$0.00	Not Applicable	0	\$ -	See Level I Note Below Input (MAB) in Column E, Cell E3, and # of Violations	
Note 2)		Level II - Maximum Aggregate Balance(MAB) of the Account < \$250,000	\$5,000 for each violation, not to exceed 10% of the maximum balance in the account during the year	\$55,000.00	Not Applicable	1	\$ 5,000	See Level II-Note! Below Input # of Violations	
Note 3)		Level II - Maximum Aggregate Balance(MAB) of the Account < \$250,000	\$5,000 for each violation, not to exceed 10% of the maximum balance in the account during the year	\$55,000.00	Not Applicable	1	\$ 5,000	See Level II-Note! Below Input # of Violations	
Note 4)		Level II - Maximum Aggregate Balance(MAB) of the Account < \$250,000	\$5,000 for each violation, not to exceed 10% of the maximum balance in the account during the year	\$55,000.00	Not Applicable	1	\$ 5,000	See Level II-Note! Below Input # of Violations	
Note 5)		Level III - Maximum Balance Per Account > \$250,000	\$10,000 for each violation	\$0.00	Not Applicable	0	\$ -		
							Total Non-Willful FBAR Penalty	\$ 15,000	

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- 1) **Change Cell E10** to be “\$13,000”
- 2) **Change Cell E11** to be “\$ 2,000”

### Level 2 Non-Willful Mitigation Example

- Facts: for 2011 the person failed to report three accounts
- Facts: maximum balance of each account:
  - Account 1: \$55,000
  - Account 2: \$13,000
  - Account 3: \$2,000
  - Maximum Aggregate Balance (**MAB**): **\$70,000**
- Level 2 non-willful FBAR penalty per account:
  - Account 1: \$5,000
  - Account 2: \$1,300 (\$13,000 x 10%)
  - Account 3: \$200
- Total FBAR penalty: \$6,500

<b>FBAR Penalty Mitigation Comps After 10222004</b> <b>Willful and Non-Willful Revision 6192013 Spreadsheet</b> <b>Non-Willful Level 2 Example</b>							
E10		13000					
A	B	C	D	E	F	G	H
1							
2	FBAR						
3							
4							
5	FBAR Penalty Mitigation Guidelines After October 22, 2004						
6							
Notes	FBAR Non-Willful Penalties	Account Balance	Per Account Penalty Structure	Maximum Per Account Balance in USD During The Calendar Year	\$/301 Following Year FBAR Filing Date Account Balance in USD	# of Violations	Computed Penalty Amount
Note1		Level I - Maximum Aggregate Balance (MAB) of the Accounts <\$50,000	\$500 for each violation, not to exceed an aggregate penalty of \$5,000	\$0.00	Not Applicable	0	\$ .
Note1		Level II - Maximum Aggregate Balance(MAB) of the Account <\$250,000	\$5,000 for each violation, not to exceed 10% of the maximum balance in the account during the year	\$55,000.00	Not Applicable	1	\$ 5,000
Note1		Level II - Maximum Aggregate Balance(MAB) of the Account <\$250,000	\$5,000 for each violation, not to exceed 10% of the maximum balance in the account during the year	\$13,000.00	Not Applicable	1	\$ 1,300
Note1		Level II - Maximum Aggregate Balance(MAB) of the Account <\$250,000	\$5,000 for each violation, not to exceed 10% of the maximum balance in the account during the year	\$2,000.00	Not Applicable	1	\$ 200
Note1		Level III - Maximum Balance Per Account >\$250,000	\$10,000 for each violation	\$0.00	Not Applicable	0	\$ .
					Total Non-Willful FBAR Penalty		\$ 6,500
							30

### Explain

Under the Level 2 FBAR Non-Willful Penalty Mitigation Guidelines, the FBAR penalty is the lesser of \$5,000 per violation or ten percent of the maximum balance in each account. In our example, the penalty for account number 1 is \$5,000, because ten percent of the \$55,000 maximum balance in the account, which is \$5,500, exceeds \$5,000. The penalty for account number 2 is \$1,300, because ten percent of the maximum balance of the account is less than \$5,000 (ten percent of \$13,000 is \$1,300). The penalty for account number 3 is \$200, which is ten percent of the maximum balance in the account (ten percent of \$2,000 is \$200). Therefore, in this example, the total FBAR penalties using the Level 2 non-willful mitigation guidelines is \$6,500.

**MAB** is \$70,000 which **Determines Level 2** NW FBAR Penalty for all 3 accounts even though Account 2 and Account 3 is Less than \$50,000.

□ Facts: maximum balance of each account:

Account 1: \$55,000

Account 2: \$13,000

Account 3: \$2,000

Maximum Aggregate Balance (**MAB**): **\$70,000**

Normal FBAR Penalty Mitigation Guidelines for Violations Occurring After October 22, 2004

Willfulness Penalties	
To Qualify for Level I - Determine Aggregate Balances	If the maximum aggregate balance for all accounts to which the violations relate did not exceed \$50,000, Level I applies to all accounts . Determine the maximum balance at any time during the calendar year for each account. Add the individual maximum balances to find the maximum aggregate balance.
Level I Penalty is	The greater of \$1,000 per violation or 5% of the maximum balance during the year of the account to which the violations relate for each violation.
To Qualify for Level II – Determine Account Balance	If Level I does not apply and if the maximum balance of the account to which the violations relate at any time during the calendar year did not exceed \$250,000, Level II applies to that account .
Level II Penalty is per account	The greater of \$5,000 per violation or 10% of the maximum balance during the calendar year for each Level II account .
To Qualify for Level III	If the maximum balance of the account to which the violations relate at any time during the calendar year exceeded \$250,000 but did not exceed \$1,000,000, Level III applies to that account .
Level III Penalty is per account.	The greater of (a) or (b): (a) 10% of the maximum balance during the calendar year for each Level III account, or (b) 50% of the closing balance in the account as of the last day for filing the FBAR .
To Qualify for Level IV	If the maximum balance of the account to which the violations relate at any time during the calendar year exceeded \$1 million, Level IV, the statutory maximum, applies to that account.
Level IV Penalty is per account the statutory maximum	The greater of (a) or (b): (a) \$100,000, or (b) 50% of the closing balance in the account as of the last day for filing the FBAR.

**Maximum Aggregate Balance (MAB)**= The **Sum** of **Maximum Value** in United States Dollars (**USD**) of **Each Account** for the **Calendar Year**.

The **MAB Determines** the Level of **Willful FBAR Penalty** being **Assessed** for **Levels 1 and 2 ONLY**:

The **FBAR Willful Level 3** and **Level 4** Penalties **introduce** and **use** for the **First Time** the **6/30/Following Year End Balance** of a Foreign Account to **Calculate** the Correct **FBAR Penalty**. You **must** use the 6/30 balance to compute.

## Level 4 Willful Mitigation Example

---

- Facts: for 2011 the person failed to report two accounts
- Facts: the accounts balances are as follows:
  - Account 1: \$1,370,000 maximum balance
  - Account 1: \$1,260,000 balance on June 30, 2012
  - Account 2: \$1,760,000 maximum balance
  - Person closed account 2 on March 16, 2012
  - Maximum aggregate balance: \$3,130,000
- Level 4 willful FBAR penalty per account:
  - Account 1: \$630,000 ( $\$1,260,000 \times 50\%$ )
  - Account 2: \$100,000
  - Total FBAR penalty: \$730,000

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### **The facts of the case are that for 2011 a person failed to report both of his foreign accounts.**

The maximum balance of account number 1 was \$1,370,000, and the balance on June 30, 2012 was \$1,260,000. The maximum balance of account number 2 was \$1,760,000, and the person closed account number 2 on March 16, 2012. The maximum aggregate balance, which is determined by adding together the maximum balance of both accounts, is \$3,130,000.

The maximum aggregate balance for this person exceeded \$50,000, so the person does not meet the criteria for Level 1 willful FBAR penalty mitigation. Assuming the person meets all four mitigation criteria, willful FBAR penalty mitigation is appropriate for both of the accounts.

For account number 1, Level 4 willful FBAR mitigation applies because the maximum balance of the account exceeded \$1,000,000. Under Level 4 willful mitigation, the penalty is the greater of \$100,000 or 50 percent of the balance on the date of violation. For account 1, the balance of the date of the violation, which is June 30, 2012, was \$1,260,000, so the Level 4 penalty for this account is 50 percent of \$1,260,000, which is \$630,000.

The maximum balance of account number 2 was \$1,760,000. Level 4 willful FBAR mitigation applies to account number 2 because the maximum balance of the account exceeded \$1,000,000. Since the person closed account number 2 before the due date of the 2011 FBAR, the balance of the account on June 30, 2012 is zero. As a result, the Level 4 willful FBAR penalty is \$100,000, which is the greater of \$100,000 or 50 percent of the balance in the account on June 30, 2012.

Therefore, in this example, the total willful FBAR penalties using the mitigation guidelines is \$730,000.

FBAR Penalty Mitigation Comps After 10222004 Willful and Non-Willful Revision 6192013 Spreadsheet Willful Level 4 Example							
Notes	Account Balance	Per Account Penalty Structure	Maximum Per Account Balance in USD During The Calendar Year	6/30/ Following Year FBAR Filing Date Account Balance in USD	# of Violations	Computed Penalty Amount	
Note! A)	Level I - Maximum Aggregate Balance(MAB) of the Account <\$50,000	The greater of \$1,000 for each violation or 5% of the maximum balance in the account during the year	\$0.00	Not Applicable	0	\$ .	
Note! A)	Level II - Maximum Aggregate Balance(MAB) of the Account <\$250,000	The greater of \$5,000 for each violation or 10% of the maximum balance in the account during the year	\$0.00	Not Applicable	0	\$ .	
Note! A)	Level III - Maximum Balance Per Account >\$250,000 but <\$1,000,000	The Per Account Penalty is the greater of 10% of the maximum balance during the year or 50% of the account balance in the account as of the last day for filing the FBAR (6/30/Following Year)	\$0.00	\$0.00	0	\$ .	
Note! A)	Level IV - Maximum Balance Per Account >\$1,000,000	The greater of \$100,000 or 50% of the closing balance in the account as of the last day for filing the FBAR (6/30/Following Year)	\$1,370,000.00	\$1,260,000.00	1	\$ 630,000	
					Total Willful FBAR Penalty	\$ 630,000	

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- 1) **Open** the **FBAR Penalty Mitigation Comps** After 10222004 Willful and Non-Willful Revision 6192013.xls- **Spreadsheet**
- 2) **Go** to the **2010 TAB** in the **Same Spreadsheet to Save Time.**
- 3) **Enter** in **Cell E16** “**\$1,370,000**”
- 4) **Enter** in **Cell F16** “**1,260,000**”
- 5) **Enter** in **Cell G16** “**1**”

#### Level 4 Willful Mitigation Example

- Facts: for 2011 the person failed to report two accounts
- Facts: the accounts balances are as follows:
  - Account 1: \$1,370,000 maximum balance
  - Account 1: \$1,260,000 balance on June 30, 2012
  - Account 2: \$1,760,000 maximum balance
  - Person closed account 2 on March 16, 2012
  - Maximum aggregate balance: \$3,130,000
- Level 4 willful FBAR penalty per account:
  - Account 1: \$630,000 (\$1,260,000 x 50%)
  - Account 2: \$100,000
- Total FBAR penalty: \$730,000





## FBAR Penalty Mitigation Comps After 10222004 Willful and Non-Willful Revision 6192013 Spreadsheet Willful Level 4 Example

Ex Account Penalty Structure	Maximum Ex. Account Balance in USD During the Calendar Year	FBAR Filing Date - Account Balance in USD	# of Violations	Computed Penalties Amount	Notes
Level I: \$500 for each violation, not to exceed an aggregate penalty of \$10,000	\$0.00	Not Applicable	0	\$	See Level I Note Below
Level II: \$2,500 for each violation, not to exceed 10% of the maximum balance in the account during the year	\$0.00	Not Applicable	0	\$	See Level II Note Below
Level III: \$10,000 for each violation	\$0.00	Not Applicable	0	\$	See Level III Note Below
Level IV: Maximum Balance Per Account = \$1,000,000	\$1,000,000	\$1,000,000	1	\$30,000	See Level IV Note Below
Total Willful FBAR Penalty				\$	\$30,000

**Level I Note:** Non-Willful Penalty is Computed Entirely on Multiple Violations by Using the Maximum Aggregate Balance (MAB) in Column G, Cell E8, Instead of Maximum Per Account Balance.

**Level II Note:** Once the Maximum Aggregate Balance (MAB) > \$50,000, Then Any Level II Penalty is applicable to each, or every, and All Accounts.

**Level III Note:** The Ex Account Penalty is the % of 10% Maximum Balance During the Calendar Year or 50% of the Closing Balance as of June 30th in the Following Year.

**Level IV Note:** Level IV Willful FBAR Penalty Only Use the \$1,000,000 or 50% of the Closing Balance as of June 30th in the Following Year.

- 1) **Left Click** Row 19
- 2) Go to Top Line Menu **Select “Edit” Then Select “Copy”**

## FBAR Penalty Mitigation Comps After 10222004 Willful and Non-Willful Revision 5292013 Spreadsheet Willful Level 4 Example

Ex. Account Penalty Structure	Maximum Ex. Account Balance in USD During the Calendar Year	FBAR Filing Date	Account Balance in USD	# of Violations	Computed Penalty Amount	Notes
Level I (MAI)	\$500 for each violation, not to exceed an aggregate penalty of \$5,000		\$0.00	Not Applicable	\$0	See Level I Note Above
Level II (MAI)	\$5,000 for each violation, not to exceed 10% of the maximum balance in the account during the year		\$0.00	Not Applicable	\$0	See Level II Note Above
Level III (MAI)	\$10,000 for each violation		\$0.00	Not Applicable	\$0	See Level III Note Above
Total Non-Willful FBAR Penalty					\$0	
Level I (MAI)	The greater of \$1,000 for each violation or 5% of the maximum balance in the account during the year		\$0.00	Not Applicable	\$0	See Level I Note Above
Level II (MAI)	The greater of \$5,000 for each violation or 10% of the maximum balance in the account during the year		\$0.00	Not Applicable	\$0	See Level II Note Above
Level III (MAI)	The greater of \$10,000 for each violation or 50% of the maximum balance in the account as of the last day for filing the FBAR (6/30/10) during the year		\$0.00	Not Applicable	\$0	See Level III Note Above
Level IV (MAI)	The greater of \$100,000 or 50% of the closing balance in the account as of the last day for filing the FBAR (6/30/10) during the year		\$1,375,000.00	1	\$30,000	See Level IV Note Below
Total Willful FBAR Penalty					\$30,000	

**Level I Note:** Non-Willful Penalty is Computed Exclusively on Multiple Violations by IMPOSING Maximum Aggregate Balance (MAI) in Column E, Cell E3, Instead of Maximum Per Account Balance.

**Level II Note:** Once the Maximum Aggregate Balance (MAI) > \$50,000, Then Any Level II Penalty is applicable to each, or every, and All Accounts.

**Maximum Aggregate Balance (MAI) =** Sum of all the Maximum Balances during the Calendar Year for All Accounts.

**Level III Note:** The Per Account Penalty is the  $\geq 10\%$  Maximum Balance During the Calendar Year or 50% of the Closing Balance as of June 30th in the Following Year.

**Level IV Note:** For Level IV Willful FBAR Penalty Only Use the  $\geq \$100,000$  or 50% of the Closing Balance as of June 30th in the Following Year.

- 1) **Left Click** Row 18
- 2) Go to Top Line Menu **Select “Edit” Then “Paste”**

FBAR Penalty Mitigation Comps After 10222004 Willful and Non-Willful Revision 5292013 Spreadsheet Willful Level 4 Example							
Notes	FBAR Willful Penalties	Account Balance	Per Account Penalty Structure	Maximum Per Account Balance in USD During The Calendar Year	6/30/ Following Year FBAR Filing Date Account Balance in USD	# of Violations	Computed Penalty Amount
Note! A)		Level I - Maximum Aggregate Balance(MAB) of the Account <\$50,000	The greater of \$1,000 for each violation or 5% of the maximum balance in the account during the year	\$0.00	Not Applicable	0	\$ .
Note! A)		Level II - Maximum Aggregate Balance(MAB) of the Account <\$250,000	The greater of \$5,000 for each violation or 10% of the maximum balance in the account during the year	\$0.00	Not Applicable	0	\$ .
Note! A)		Level III - Maximum Balance Per Account >\$250,000 but <\$1,000,000	The Per Account Penalty is the greater of 10% of the maximum balance during the year or 50% of the account balance in the account as of the last day for filing the FBAR (6/30/Following Year)	\$0.00	\$0.00	0	\$ .
Note! A)		Level IV - Maximum Balance Per Account >\$1,000,000	The greater of \$100,000 or 50% of the closing balance in the account as of the last day for filing the FBAR (6/30/Following Year)	\$1,370,000.00	\$1,260,000.00	1	\$ 630,000
Note! A)		Level IV - Maximum Balance Per Account >\$1,000,000	The greater of \$100,000 or 50% of the closing balance in the account as of the last day for filing the FBAR (6/30/Following Year)	\$1,370,000.00	\$1,260,000.00	1	\$ 630,000
				Total Willful FBAR Penalty			\$ 1,260,000

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- 1) **Change Cell E18** to be **“\$1,760,000”**
- 2) **Change Cell 718** to be **“0”**

### **Level 4 Willful Mitigation Example**

- Facts: for 2011 the person failed to report two accounts
- Facts: the accounts balances are as follows:
  - Account 1: \$1,370,000 maximum balance
  - Account 1: \$1,260,000 balance on June 30, 2012
  - Account 2: \$1,760,000 maximum balance
  - Person closed account 2 on March 16, 2012
  - Maximum aggregate balance: \$3,130,000
- Level 4 willful FBAR penalty per account:
  - Account 1: \$630,000 (\$1,260,000 x 50%)
  - Account 2: \$100,000
- Total FBAR penalty: \$730,000

FBAR Penalty Mitigation Comps After 10222004 Willful and Non-Willful Revision 6192013 Spreadsheet Willful Level 4 Example							
Notes	Account Balance	Per Account Penalty Structure	Maximum Per Account Balance in USD During The Calendar Year	6/30/ Following Year FBAR Filing Date Account Balance in USD	# of Violations	Computed Penalty Amount	
Note! A)	Level I - Maximum Aggregate Balance(MAB) of the Account <\$50,000	The greater of \$1,000 for each violation or 5% of the maximum balance in the account during the year	\$0.00	Not Applicable	0	\$ -	
Note! A)	Level II - Maximum Aggregate Balance(MAB) of the Account <\$250,000	The greater of \$5,000 for each violation or 10% of the maximum balance in the account during the year	\$0.00	Not Applicable	0	\$ -	
Note! A)	Level III - Maximum Balance Per Account >\$250,000 but <\$1,000,000	The Per Account Penalty is the greater of 10% of the maximum balance during the year or 50% of the account balance in the account as of the last day for filing the FBAR (6/30/Following Year)	\$0.00	\$0.00	0	\$ -	
Note! A)	Level IV - Maximum Balance Per Account >\$1,000,000	The greater of \$100,000 or 50% of the closing balance in the account as of the last day for filing the FBAR (6/30/Following Year)	\$1,760,000.00	\$0.00	1	\$ 100,000	
Note! A)	Level IV - Maximum Balance Per Account >\$1,000,000	The greater of \$100,000 or 50% of the closing balance in the account as of the last day for filing the FBAR (6/30/Following Year)	\$1,370,000.00	\$1,260,000.00	1	\$ 630,000	
				Total Willful FBAR Penalty		\$ 730,000	

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**The facts of the case are that for 2011 a person failed to report both of his foreign accounts.**

The maximum balance of account number 1 was \$1,370,000, and the balance on June 30, 2012 was \$1,260,000. The maximum balance of account number 2 was \$1,760,000, and the person closed account number 2 on March 16, 2012. The maximum aggregate balance, which is determined by adding together the maximum balance of both accounts, is \$3,130,000.

The maximum aggregate balance for this person exceeded \$50,000, so the person does not meet the criteria for Level 1 willful FBAR penalty mitigation. Assuming the person meets all four mitigation criteria, willful FBAR penalty mitigation is appropriate for both of the accounts.

For account number 1, Level 4 willful FBAR mitigation applies because the maximum balance of the account exceeded \$1,000,000. Under Level 4 willful mitigation, the penalty is the greater of \$100,000 or 50 percent of the balance on the date of violation. For account 1, the balance of the date of the violation, which is June 30, 2012, was \$1,260,000, so the Level 4 penalty for this account is 50 percent of \$1,260,000, which is \$630,000.

The maximum balance of account number 2 was \$1,760,000. Level 4 willful FBAR mitigation applies to account number 2 because the maximum balance of the account exceeded \$1,000,000. Since the person closed account number 2 before the due date of the 2011 FBAR, the balance of the account on June 30, 2012 is zero. As a result, the Level 4 willful FBAR penalty is \$100,000, which is the greater of \$100,000 or 50 percent of the balance in the account on June 30, 2012.

Therefore, in this example, the total willful FBAR penalties using the mitigation guidelines is \$730,000.

(b)(3) 6103(a)



FBAR Case Summary should include 4 sections:

- 1-Discussion of FBAR Violations
- 2-Number of Penalty Assessments
- 3-Total Dollar Amounts of Penalties
- 4-Case Disposition

(b)(3) 6103(a)



**7 Elements necessary to prove in any FBAR penalty Court Case:**

- 1)TP was a United States Citizen, Resident, or  
Person Doing Business in the United States.
- 2)TP had a Financial Interest in, or Signatory or  
Other Authority over a Bank, Securities or Other Financial  
Accounts during the years in question.
- 3)Bank had Balance > \$10,000 at any time  
in United States Dollars (USD).
- 4)Bank was in a Foreign Country.
- 5)TP Failed to Disclose the Bank Account.
- 6)Failure to Report was Willful or Non-Willful.
- 7)The Penalty Amounts were Proper.





(b)(3) 6103(a)



**For all FBAR Cases---Revenue Agent's Case Summary should also address the following 6 Items:**

- 1) The Balance of the Account in USD on the Date of Violation (Willful Only) or Highest Account Balance & Date (Non-Willful),**
- 2) An Analysis of Unreported Foreign Income and the Amount of Tax Omitted Attributable to Foreign Accounts at Issue,**
- 3) Reasonable Cause (Non-Willful),**
- 4) Examiner Discretion for Lesser Penalties when Used,**
- 5) Why No Willful FBAR Penalties in Non-Willful FBAR Penalty Cases, and**
- 6) The Source of the Foreign Currency Amounts and Exchange Rates Used to Arrive at USD.**

(b)(3) 6103(a)



To Qualify for Mitigation, the person must meet 4 Criteria:

1. The person has no history of criminal tax or BSA convictions for the preceding ten years and has no history of prior FBAR penalty assessments;
2. No money passing through any of the foreign accounts associated with the person was from an illegal source or used to further a criminal purpose;
3. The person cooperated during the examination; and,
4. IRS did not determine a fraud penalty against the person for an underpayment of income tax for the year in question due to the failure to report income related to any amount in a foreign account.

(b)(3) 6103(a)



**NOTE:** The Level IV Willful FBAR Penalty Mitigation Comp .xls spreadsheet can be used for any willful penalties in which the mitigation criteria are not met.

**If a Willful FBAR Level 4 Penalty is being assessed for Multiple Years, then**

the **RA may** want to consider assessing the **Willful FBAR Penalty** in **ONLY ONE YEAR** instead of Multiple Years and **USE** the **DISCRETION** in IRM 4.26.16.4.7 **as justification** and **ASSESS** the **Willful Maximum Multiple Year FBAR Penalties ONLY** in the **MOST EGREGIOUS CASES!**

### **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

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(b)(3) 6103(a)



### **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

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(b)(3) 6103(a)





**For all FBAR Cases---Revenue Agent's should Also Address the following 6 Items---In the 886A Case Summary and 400 Section:**

- 1)** The Balance of the Account in USD on the Date of Violation (Willful Only) or Highest Account Balance & Date (Non-Willful)
- 2)** An Analysis of Unreported Foreign Income and the Amount of Tax Omitted Attributable to Foreign Accounts at Issue
- 3)** Reasonable Cause,
- 4)** Examiner Discretion for Lesser Penalties when Used,
- 5)** Why No Willful FBAR Penalties in Non-Willful FBAR Penalty Cases, and
- 6)** The Source of the Foreign Currency Amounts and Exchange Rates Used to Arrive at USD.

(b)(3) 6103(a)



**For all FBAR Cases---Revenue Agent's should Also Address the following 6 Items---In the 886A Case Summary and 400 Section:**

- 1) The Balance of the Account in USD on the Date of Violation (Willful Only) or Highest Account Balance & Date (Non-Willful)
- 2) An Analysis of Unreported Foreign Income and the Amount of Tax Omitted Attributable to Foreign Accounts at Issue
- 3) Reasonable Cause,
- 4) Examiner Discretion for Lesser Penalties when Used,
- 5) Why No Willful FBAR Penalties in Non-Willful FBAR Penalty Cases, and
- 6) The Source of the Foreign Currency Amounts and Exchange Rates Used to Arrive at USD.

**For all FBAR Cases---Revenue Agent's should Also Address the following 6 Items---In the 886A Case Summary and 400 Section:**

- 1) The Balance of the Account in USD on the Date of Violation (Willful Only) or Highest Account Balance & Date (Non-Willful)
- 2) An Analysis of Unreported Foreign Income and the Amount of Tax Omitted Attributable to Foreign Accounts at Issue
- 3) Reasonable Cause,
- 4) Examiner Discretion for Lesser Penalties when Used,
- 5) Why No Willful FBAR Penalties in Non-Willful FBAR Penalty Cases, and
- 6) The Source of the Foreign Currency Amounts and Exchange Rates Used to Arrive at USD.

**For all FBAR Cases---Revenue Agent's should Also Address the following 6 Items---In the 886A Case Summary and 400 Section:**

- 1) The Balance of the Account in USD on the Date of Violation (Willful Only) or Highest Account Balance & Date (Non-Willful)
- 2) An Analysis of Unreported Foreign Income and the Amount of Tax Omitted Attributable to Foreign Accounts at Issue
- 3) Reasonable Cause,
- 4) Examiner Discretion for Lesser Penalties when Used,
- 5) Why No Willful FBAR Penalties in Non-Willful FBAR Penalty Cases, and
- 6) The Source of the Foreign Currency Amounts and Exchange Rates Used to Arrive at USD.

**For all FBAR Cases---Revenue Agent's should Also Address the following 6 Items---In the 886A Case Summary and 400 Section:**

- 1) The Balance of the Account in USD on the Date of Violation (Willful Only) or Highest Account Balance & Date (Non-Willful)
- 2) An Analysis of Unreported Foreign Income and the Amount of Tax Omitted Attributable to Foreign Accounts at Issue
- 3) Reasonable Cause,
- 4) Examiner Discretion for Lesser Penalties when Used,
- 5) Why No Willful FBAR Penalties in Non-Willful FBAR Penalty Cases, and
- 6) The Source of the Foreign Currency Amounts and Exchange Rates Used to Arrive at USD.

**For all FBAR Cases---Revenue Agent's should Also Address the following 6 Items---In the 886A Case Summary and 400 Section:**

- 1) The Balance of the Account in USD on the Date of Violation (Willful Only) or Highest Account Balance & Date (Non-Willful)
- 2) An Analysis of Unreported Foreign Income and the Amount of Tax Omitted Attributable to Foreign Accounts at Issue
- 3) Reasonable Cause,
- 4) Examiner Discretion for Lesser Penalties when Used,
- 5) Why No Willful FBAR Penalties in Non-Willful FBAR Penalty Cases, and
- 6) The Source of the Foreign Currency Amounts and Exchange Rates Used to Arrive at USD.



**For all FBAR Cases---Revenue Agent's should Also Address the following 6 Items---In the 886A Case Summary and 400 Section:**

- 1) The Balance of the Account in USD on the Date of Violation (Willful Only) or Highest Account Balance & Date (Non-Willful)
- 2) An Analysis of Unreported Foreign Income and the Amount of Tax Omitted Attributable to Foreign Accounts at Issue
- 3) Reasonable Cause,
- 4) Examiner Discretion for Lesser Penalties when Used,
- 5) Why No Willful FBAR Penalties in Non-Willful FBAR Penalty Cases, and
- 6) The Source of the Foreign Currency Amounts and Exchange Rates Used to Arrive at USD.

**For all FBAR Cases---Revenue Agent's should Also Address the following 6 Items---In the 886A Case Summary and 400 Section:**

- 1) The Balance of the Account in USD on the Date of Violation (Willful Only) or Highest Account Balance & Date (Non-Willful)
- 2) An Analysis of Unreported Foreign Income and the Amount of Tax Omitted Attributable to Foreign Accounts at Issue
- 3) Reasonable Cause,
- 4) Examiner Discretion for Lesser Penalties when Used,
- 5) Why No Willful FBAR Penalties in Non-Willful FBAR Penalty Cases, and
- 6) The Source of the Foreign Currency Amounts and Exchange Rates Used to Arrive at USD.

**For all FBAR Cases---Revenue Agent's should Also Address the following 6 Items---In the 886A Case Summary and 400 Section:**

- 1) The Balance of the Account in USD on the Date of Violation (Willful Only) or Highest Account Balance & Date (Non-Willful)
- 2) An Analysis of Unreported Foreign Income and the Amount of Tax Omitted Attributable to Foreign Accounts at Issue
- 3) Reasonable Cause,
- 4) Examiner Discretion for Lesser Penalties when Used,
- 5) Why No Willful FBAR Penalties in Non-Willful FBAR Penalty Cases, and
- 6) The Source of the Foreign Currency Amounts and Exchange Rates Used to Arrive at USD.

(b)(3) 6103(a)



**For all FBAR Cases---Revenue Agent's should Also Address the following 6 Items---In the 886A Case Summary and 400 Section:**

- 1) The Balance of the Account in USD on the Date of Violation (Willful Only) or Highest Account Balance & Date (Non-Willful)
- 2) An Analysis of Unreported Foreign Income and the Amount of Tax Omitted Attributable to Foreign Accounts at Issue
- 3) Reasonable Cause,
- 4) Examiner Discretion for Lesser Penalties when Used,
- 5) Why No Willful FBAR Penalties in Non-Willful FBAR Penalty Cases, and
- 6) The Source of the Foreign Currency Amounts and Exchange Rates Used to Arrive at USD.

## **FBAR Coordinator Review**

- 1) Reviews the FBAR Summary Memorandum and 886A Case Summary.
- 2) Reviews the Entire Case File to ensure Completeness, including Evidence to Support the Penalties Proposed.
- 3) Reviews the Penalty Computation to Verify if it is Correct.
- 4) Verifies RA Addressed Reasonable Cause.

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There are one or more FBAR coordinators in each Examination Area. The primary role of the FBAR coordinator is to assist you with FBAR cases, including both administrative and case-development issues. It is important to involve an FBAR coordinator as early as possible in the investigation. The FBAR coordinator can assist you and your manager with evaluating the evidence to determine whether there is sufficient evidence to support the proposed FBAR penalty.

The FBAR coordinator reviews your Counsel penalty memorandum to make sure there is a complete discussion of all relevant evidence. The FBAR coordinator also verifies the accuracy of the computation of the proposed FBAR penalty.

The FBAR coordinator also assists with resolving cases where Counsel does not agree with FBAR penalty proposed by you and your manager.

### **South Atlantic**

(b) (6)

A large black rectangular redaction box covers the majority of the text in this section, starting below the 'South Atlantic' header and extending to the right edge of the page.

## **Role of the Fraud Technical Advisor**

- Leverage fraud experience to develop willful FBAR penalty cases
- Assists with evaluating whether the evidence shows willfulness
- Assists with criminal referrals
- Reviews Counsel memorandum for completeness

You should leverage the experience of the fraud technical advisor to assist you with developing willful FBAR cases. The fraud technical advisor help evaluate whether there is sufficient evidence to support a willful FBAR penalty. The fraud technical advisor also can assist with identifying cases that warrant a criminal referral, not only for the income tax violations but also for related FBAR violations.

The fraud technical advisor reviews the FBAR memorandum to Counsel for completeness.

## Area Counsel

- Does Not Compute the FBAR Penalty
- Reviews the Proposed FBAR Penalty
- May Recommend an Alternative Computation
- May Advise to Assert a **Lesser or Greater** Penalty
- May Advise the Evidence is Not Sufficient to Sustain the Proposed Penalty (may identify information additional evidence that may support the proposed penalty)
- May Advise **Not to Assert** an FBAR Penalty
- **Group Manager has the Final Authority to Determine the Appropriate FBAR Penalty**

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Counsel reviews all proposed FBAR penalty assessments.

Counsel has 45 days to provide written legal advice regarding the proposed FBAR penalty assessments, although for more complex cases they may need additional time. The role of Counsel is to review the evidence to determine whether the evidence supports your proposed FBAR penalty. Counsel will not determine the amount of the FBAR penalty for you.

Prior to sending the FBAR penalty package, your group manager must approve the FBAR penalties in writing.

After Counsel reviews the proposed FBAR penalty, you send the FBAR penalty package to the taxpayer. The FBAR penalty package consists of:

- Letter 3709, *FBAR Penalty Letter*
- Form 13449, *Agreement to Assessment and Collection of Penalties Under 31 U.S.C. 5321(a)(5) and 5321(a)(6)*
- Notice 1330, *Information on Making FBAR Penalty Payment by Check*

### **7 Points To Consider for Counsel-**

- 1) **Willfulness Determination is Fact Specific to Each Case**
- 2) If No Deficiency, Then No Non-Willful Penalty.
- 3) Size of the Foreign Account is N/A to Non-Willful Penalty, but pertinent to Willful FBAR Penalties.
- 4) Counsel wants Reasonable Cause Addressed.
- 5) Interview the TP, POA and Return Preparer even by phone for FBAR Case File.
- 6) Consider Examiner Discretion on Multiple Penalties-Willful.
- 7) Alternative Position with Willful One Year and Alternatively Non-Willful Multiple Years.

## **Close the FBAR Case**

- **Send Correspondence to the Taxpayer**
  - FBAR Warning Letter (No Penalties)
  - FBAR 30-Day Letter Package (Penalties)
- **Wait for the taxpayer to respond**  
(30-day Letter Only)
- **Close the Case from the Group**
  - To Detroit (Warning Letter, Agreed Cases, and No-Response Cases)
  - To Appeals (Unagreed Appeal Cases)

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To close the FBAR case, complete the FBAR monitoring document to show the disposition of the case, update ERCS, assemble the FBAR case file, and send the closed case to Detroit.

The penalties are assessed for no response cases and short statute cases by Detroit FBAR Penalty Coordinators.

For cases going to Appeals in which the willful penalty is proposed, guidance regarding alternative positions will be forthcoming from National Office. Contact your FBAR Coordinator.



## **FBAR Procedures – Agreed Case**

- Taxpayer signs Form 13449 to agree to the FBAR penalty assessment
- Separate check for the FBAR penalties
- Special processing procedures for checks to pay FBAR penalties
- Close the case
  - Update FBAR monitoring document
  - Update ERCS
  - Send closed case to Detroit
- The Detroit Computing Center
  - Assesses the FBAR penalties
  - Sends the notice of the assessment
  - Forwards the case for collection

To agree with the FBAR penalty assessments the taxpayer signs Form 13449 and returns it to you, preferably with payment. The taxpayer must send a separate check to pay the FBAR penalties. The Detroit Computing Center processes FBAR penalty checks electronically.

To close the FBAR case, complete the FBAR monitoring document to show the disposition of the case, assemble the FBAR case file, update ERCS, and send the closed case to Detroit.

The Detroit Computing Center assesses the FBAR penalties, sends the notice of the assessment to the taxpayer, and, if necessary, forwards the case for collection.

## **FBAR Procedures – Unagreed Case**

- An unagreed FBAR case is where the taxpayer fails to respond to L-3709
- Close the case
  - Update FBAR monitoring document
  - Update ERCS
  - Close the case to Detroit
- Detroit assesses the penalty, sends notice of assessment, and forwards the case for collection

An unagreed FBAR penalty case is where the taxpayer fails to respond to the FBAR 30-day letter, Letter 3709.

To close the FBAR case, complete the FBAR monitoring document to show the disposition of the case, update ERCS, and close the case to Detroit.

The Detroit Computing Center assesses the FBAR penalties, sends the notice of the assessment to the taxpayer, and forwards the case for collection.

## Pre-Assessment FBAR Appeals

- Taxpayer must file a protest within 30 days of Letter 3709 (retain the case for 15 days past the 30-day due date)
- Appeals requires 180 days on assessment statute
- Update the FMD and send it to address for closed cases (check the Disposition box “Case Closed with Penalty to Appeals”)
- Close the case through Technical Services directly to Appeals (**not to Detroit**)
  - FBAR cases are coordinated issue cases in Appeals
  - Attach Form 3198 to the case file, identify the case is an FBAR case, list the FBAR penalty years, and the related income tax cases
  - Enter UIL 9999.99.01 on the transmittal letter and Form 3198
  - Where possible, send the unagreed income tax and FBAR penalty cases at the same time

To appeal the FBAR penalties, the taxpayer must file a protest within 30 days of Letter 3709. You should allow an additional 15 days past the deadline to receive the protest from the taxpayer.

Appeals requires at least 180 days remaining on the FBAR penalty assessment statute. The taxpayer must sign the FBAR penalty statute extension, otherwise the taxpayer will not have pre-assessment appeal rights.

Updates the FBAR monitoring document and check the Disposition box “Case Closed with Penalty to Appeals.” After updating the FBAR monitoring document, your manager sends a copy to the Detroit Computing Center at the same address as for closed FBAR penalty cases.

Assemble the FBAR penalty case file for closing and update ERCS. Following local procedures, your manager sends the appealed FBAR penalty case file through Technical Services directly to Appeals. **Do not send appealed FBAR penalty cases to Detroit.**

FBAR cases are coordinated issue cases in Appeals. Attach Form 3198 to the outside of the FBAR case file. On Form 3198 indicate that the case is an FBAR case, list the years for which there are proposed FBAR penalties, and list the related income tax cases, including any Title 26 penalty cases. Write UIL 9999.99.01 on Form 3198 so the Appeals officer knows to contact the Appeals FBAR Coordinator prior to starting the case.

Where possible, send to Appeals all unagreed income tax and FBAR cases at the same time.

## **Post-Assessment Appeals**

- The taxpayer responds to Letter 3709 and requests an Appeals conference but refuses to sign the FBAR penalty statute extension (less than 180 days on the penalty assessment statute)
- Where the proposed FBAR penalties exceed \$100,000, once assessed, Appeals has limited authority to settle the case (31 U.S.C. 3711; 31 C.F.R. sections 902.1 and 902.2)
- Where the proposed penalties exceed \$100,000, the group manager must advise taxpayer of this provision and document this contact in the FBAR case activity record

The taxpayer only has post-assessment appeal rights where the taxpayer responds to Letter 3709 and requests an Appeals conference but refuses to sign the FBAR penalty statute extension. Appeals will not accept an FBAR penalty case with less than 180 days on the penalty assessment statute, so for these cases you first have the Detroit Computing Center assess the FBAR penalties prior to sending the FBAR penalty case to Appeals.

Under Section 3711 of Title 31, and the related Title 31 regulation section 5.1, only the Department of Justice may compromise a debt that exceeds \$100,000. Therefore, where the proposed FBAR penalties exceed \$100,000, and the taxpayer refused to sign the FBAR statute extension but requested an Appeals conference, prior to assessing the FBAR penalty your manager shall contact the taxpayer or his representative to explain that Appeals has limited authority to settle the case. Your manager shall document this contact on the activity record in the FBAR penalty case.

## **Post-Assessment Appeals, cont'd.**

- To assess the FBAR penalties, send the following documents to the Detroit Computing Center:
  - Copy of the FMD (check the Disposition box “Case Closed with Penalty to Appeals”)
  - Unsigned Form 13449 showing the penalty assessment for the year with less than 180 days on the assessment statute
  - A statement that the FBAR penalty case is being forwarded to Appeals
- Email (preferred) or FAX the documents to Nancy Beasley:
  - Nancy.Beasley@irs.gov
  - FAX: (313) 234-2278
- The group manager must email the documents or attach a statement that he approved the penalty assessment

If the taxpayer refuses to sign the statute extension, then you have to assess the FBAR penalties prior to sending the case to Appeals.

You send the following documents to the Detroit Computing Center: a copy of the FBAR monitoring document (be sure to check the Disposition box “Case Closed with Penalty to Appeals” prior to sending the document to Detroit), a copy of the unsigned Form 13449 showing the penalty assessment for the year or years with less than 180 days on the assessment statute, and a statement that you will forward the FBAR penalty case to Appeals after Detroit assesses the FBAR penalties.

Email is the preferred method to send the assessment information to Detroit. Using secured email, your manager sends the documents to Nancy.Beasley@irs.gov.

Your manager may also FAX the documents directly to Nancy Beasley; her FAX number is (313) 234-2278.

Your manager must email the documents to Detroit, or provide you with a statement to attach to your email, or the FAX, that states the group manager approves the penalty assessment.



## **Post-Assessment Appeals, cont'd.**

- Detroit **only** immediately assesses the FBAR penalty for the short-statute year
- Detroit faxes to the originating group:
  - a copy of the FBAR penalty assessment document
  - a copy of the balance due letter sent to the taxpayer
- Send the FBAR penalty case to appeals through Technical Services (must include the assessment documents from Detroit)

After receiving the documents from the group, the Detroit Computing Center immediately assesses the FBAR penalty. Detroit will assess only FBAR penalties with less than 180 days on the statute.

After assessing the FBAR penalty, Detroit faxes to the originating group a copy of the FBAR penalty assessment document and a copy of the balance due letter sent to the taxpayer; you must include both of these documents in the FBAR penalty case file to be sent to Appeals. You cannot close the FBAR penalty case until Detroit sends these documents because Appeals will reject it without these documents.

Your group manager sends the FBAR penalty case to Appeals through Technical Services.

## **Post-Assessment Appeals, cont'd.**

FBAR cases are coordinated issue cases in Appeals

Attach Form 3198 to the case file

- identify the case is an FBAR case
- list the FBAR penalty years
- identify the FBAR penalty years already assessed
- list related income tax cases
- Enter UIL 9999.99.01

FBAR cases are coordinated issue cases in Appeals. Attach Form 3198 to the outside of the case file. On Form 3198 indicate that the case is an FBAR case, list the years for which there are proposed FBAR penalties, identify the years where Detroit already assessed the FBAR penalties, and list the related income tax cases, including Title 26 penalty cases. Your group manager needs to enter UIL 9999.99.01 on Form 3198 so the Appeals officer knows to contact the Appeals FBAR Coordinator prior to starting the case.

## Post-Assessment Appeals, cont'd.

- Appeals package may include both pre-assessment and post-assessment penalty cases
- If possible, send all cases to Appeals at the same time, including unagreed income tax cases
- Update ERCS
- Close the case through Technical Services directly to Appeals (**not to Detroit**)

The cases sent to Appeals may include both pre-assessment and post-assessment FBAR penalty cases; if possible, you should send all cases, including related unagreed income tax cases, to Appeals at the same time.

Assemble the FBAR penalty case file for closing and update ERCS. Following local procedures, send the appealed FBAR penalty case file through Technical Services directly to Appeals. Do not send appealed FBAR penalty cases to Detroit.



## **FBAR Penalty Case Steps**

- 1) Discover a potential FBAR violation in Title 26
- 2) **Secure a Related Statute Memorandum (RSM) in Title 31**
- 3) Establish the **2** FBAR Administrative Controls
- 4) Investigate the FBAR Penalty Case
  - Use the FBAR 4318 for Penalty Case Structure
- 5) Determine the Appropriate FBAR Penalty
- 6) **Document Penalty Decision** in a **Memorandum** to **Area Counsel** & **Attach 886A-Case Summary**
- 7) **Issue** Form 13449 (FBAR **RAR**) **only after** case file **reviewed** by FBAR Coordinators & FBAR Penalty **approved** by FBAR Area Counsel.
- 8) Close the case

**The Ultimate Goal** -of the Revenue Agent in an FBAR Penalty Case File is to Complete Step 6)

You prepare an FBAR penalty memorandum where you propose an FBAR penalty. This memorandum explains the FBAR penalty investigation and the results. The memorandum should summarize the evidence contained in the FBAR case file, analyze the evidence, interpret the evidence, discuss whether the taxpayer had reasonable cause for violations, and compute the penalties.

If the taxpayer indicated that he had reasonable cause for the violation, such a statement must be included in the memorandum and you must address any points raised by the taxpayer. If the taxpayer did not provide a statement of reasonable cause, either try to anticipate what his position could be, or point to specific evidence you gathered that shows the taxpayer did not have reasonable cause for the FBAR violation.

The memorandum is from the examination group (**Signed by GM**) to Counsel to request advice on whether the evidence supports the proposed FBAR penalty, either willful or non-willful.

The FBAR penalty case file is separate from the related income tax examinations or other Title 26 penalty cases. The FBAR penalty case and the income tax cases may follow separate processing paths so it is important to include in the FBAR penalty case copies of all the relevant information from the Title 26 case files, including information to show the amounts of the tax deficiencies, if any, related to the undisclosed accounts.

**As with all cases, well organized and indexed workpapers are easier to follow. Also keep in mind that, if the FBAR penalty case goes to trial, your FBAR workpapers will be a very important part of the government's FBAR penalty case.**

**Read Slide 8 Form 8938 if time permits.**