



INDEPENDENT OFFICE  
OF APPEALS

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, DC 20224

February 9, 2026

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Affected IRM: 8.11.6

MEMORANDUM FOR IRS INDEPENDENT OFFICE OF APPEALS (APPEALS)  
EMPLOYEES

FROM: Margaret K. Harris /s/ *Margaret K. Harris*  
Acting Director, Specialized Examination Programs and  
Referrals

SUBJECT: Updated Interim Guidance: FBAR case procedures due to the  
Bittner v. United States Supreme Court decision

**Purpose:** This memorandum supersedes the September 26, 2023 interim guidance memorandum AP-08-0923-0010, FBAR Case Procedures Due to the Bittner v. United States Supreme Court Decision, to provide additional employee guidance and an extended expiration date. This interim guidance provides Appeals procedures due to the U.S. Supreme Court decision in Bittner v. United States<sup>1</sup> and prescribes the use of a new assessment statute consent form. Please ensure this information is distributed to all affected employees within your organization.

**Background:** The Supreme Court held in Bittner that the failure to file a legally compliant Report of Foreign Bank and Financial Accounts (FBAR) constitutes a single violation of 31 U.S.C. 5314, regardless of the number of unreported or incorrectly reported accounts, and that penalties for non-willful reporting violations "accrue on a per-report, not a per-account basis".<sup>2</sup>

The IRS has been delegated FBAR enforcement authority, including authority to assess and collect FBAR civil penalties. Pursuant to Delegation Order 25-13, Enforcement of Report of Foreign Bank and Financial Accounts (FBAR) Requirements, these responsibilities are performed by the Small Business/Self-Employed Division (SB/SE) as well as other IRS divisions, including the IRS Independent Office of Appeals (Appeals).

**Procedural Change:** See Attachment.

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<sup>1</sup> Bittner v. U.S., 143 S. Ct. 713 (2023)

<sup>2</sup> Id. at 720, 725.

**Effect on Other Documents:** This guidance will be incorporated into IRM 8.11.6, FBAR Penalties, within two years from the date of this memorandum.

**Effective Date:** This guidance is effective as of the date of this memorandum.

**Contact:** Appeals employees should follow existing procedures to elevate questions through their management chain and follow established procedures on How to Contact an Analyst.

Attachment: FBAR Case Procedures Due to Bittner v. United States Supreme Court Decision, and Other Updated Procedures

cc: [www.irs.gov](http://www.irs.gov)

#### **IRM 8.11.6.4.2**

##### **Consent to Extend the Time to Assess Civil Penalties for FBAR Violations**

#### **MODIFY (1):**

(1) Only use the consent form created specifically to extend the assessment statute of limitations for FBAR cases, Form 15616, *Consent to Extend the Time to Assess Civil FBAR Penalties*.

#### **MODIFY (2):**

(2) Appeals Team Managers, Appeals Team Case Leaders, and Appeals Officers have the authority to execute a Form 15616, *Consent to Extend the Time to Assess Civil FBAR Penalties*. See IRM 1.2.2.15.13, *Delegation Order 25-13 (Rev. 1), Enforcement of Report of Foreign Bank and Financial Accounts (FBAR) Requirements*.

#### **8.11.6.6**

##### **Appeals Technical Employee (ATE) Procedures for FBAR Penalty Cases**

#### **MODIFY NOTE IN (9) AND ADD NOTE IN (9):**

**Note 1:** ATE must prepare new Forms 13449 and not use the Forms 13449 prepared by Compliance. When preparing Forms 13449, for both non-willful and willful reporting violations, prepare one form per calendar year. ATE should follow the drafting procedures found in IRM 4.26.17.3.7.1, *General Preparation of Form 13449*, with the exception for willful violations noted below.

**Note 2:** Penalties for willful violations must be allocated to each violation/account on Forms 13449 and the "Amount of penalty" field cannot be blank as required for non-willful violations. Therefore, do not manually enter the total willful penalty proposed for the year in the "TOTAL proposed penalty" field of the form.

#### **IRM 8.11.6.7**

##### **Payment Procedures for FBAR Case**

#### **ADD (3)**

(3) Do **not** submit Form 13449 when submitting a payment for processing.

#### **IRM 8.11.6.9.2**

##### **FBAR Closing - Pre-Assessment Case**

#### **MODIFY (5) AND NOTE IN (5) AND ADD NOTE IN (5):**

(5) An unagreed case is when the FBAR penalty is fully or partially sustained and the filer does not agree. Appeals will prepare new Forms 13449, secure the ATM signature, and send to CTR/BSA via email to have the penalty assessed. The CTR/BSA email

address is: # [REDACTED] #. In the body of the message include:

- a) Filer name and TIN,
- b) FBAR period(s) ready for assessment and the statute date of each, and
- c) For each year with only non-willful reporting violations, include the 14-digit BSA ID of each legally non-compliant FBAR being penalized (or identify as "not filed"). This allows Form 13448 to be prepared in accordance with IRM 4.26.17.4.3.5.

**Note 1:** The 14-digit BSA ID for each non-compliant FBAR filing should be in the file received in Appeals. This information is typically found on the digital copy of the filed FBAR. If a thorough review of the physical case file did not result in its discovery, contact the assigned Appeals FBAR coordinator for assistance.

**Note 2:** If the filer does not sign Form 13449, the penalty is sustained in full. The filer should be notified the penalty will be assessed using Letter 5834 or equivalent language.

#### **IRM 8.11.6.10**

#### **FBAR Administrative File**

#### **MODIFY (1) AND NOTE IN (1):**

(1) The following documents, if applicable, should be included in the administrative file and uploaded to ACDS by the ATE/ATM:

- Form 5402, *Appeals Transmittal and Case Memo*, signed by ATM  
**Note:** If the case has both pre-assessed and post-assessed penalties, close all penalties together on the same Form 5402. Use the closing code for the post-assessed year on the Form 5402.
- Appeals Case Memorandum (ACM)
- Schedule of Adjustments (SOA)
- Letter 5834, *Foreign Banking and Financial Accounts Report (FBAR) Agreement Form Transmittal*, or letter with equivalent language sent to filer
- Form 13449, *Agreement to Assessment and Collection of Penalties Under 31 U.S.C. 5321(a)(5) and 5321(a)(6)*, prepared by Appeals
- Form 13448, *Penalty Assessment Certification Summary (Title 31 "FBAR")*, or other documentation received from CTR/BSA to confirm the penalty has been assessed or adjusted
- Copy of any checks received in Appeals along with Form(s) 3244-A and Form 3210
- Appropriate closing letter dated and signed by the ATM
- FBAR penalty computation spreadsheet/worksheet
- Form 15616, *Consent to Extend the Time to Assess Civil FBAR Penalties*, if applicable
- Form 13536, *FBAR Monitoring Document (FMD)*, if applicable
- Additional items identified as necessary