

# American College of Tax Counsel Files Amicus Brief With U.S. Supreme Court

*National association of tax lawyers urges Supreme Court to overturn multiple penalties for failure to file an accurate report of foreign bank accounts.*

ROCHESTER, NEW YORK, UNITED STATES, August 25, 2022 /EINPresswire.com/ -- The American



Reason dictates that a non-willful 'violation' refers to a failure to timely file an accurate FBAR, not to each separate failure on a single FBAR."

*Armando Gomez, President of the American College of Tax Counsel*

College of Tax Counsel (the "College") announces the filing on August 24, 2022, of an amicus brief with the United States Supreme Court in the case of *Alexandru Bittner v. United States* (No.21-1195). The College's brief supports the petitioner's request that the Supreme Court reverse the Fifth Circuit Court of Appeals' decision to apply multiple penalties per year for the non-willful failure to file Reports of Foreign Bank and Financial Accounts ("FBARs").

The issue in the case is whether the Bank Secrecy Act subjects a U.S. person to a single penalty for the non-willful failure to file an annual FBAR (the per form approach), or

imposes separate non-willful penalties for each account that was not reported on the FBAR (the per account approach). The College's brief explains that the IRS has taken inconsistent positions over the years on this issue in its publications and administrative guidance. Moreover, the Fifth Circuit opinion is in direct conflict with an opinion from the Ninth Circuit Court of Appeals and decisions from other lower courts, thus creating uncertainty for U.S. persons and advisors regarding the penalties that could be assessed. The College's brief asks the Supreme Court to resolve the inconsistent treatment of U.S. citizens and residents by adopting the per form approach.

## Background of the Case

The millions of U.S. individuals and entities that have an interest in, or signature or other authority over, foreign bank and financial accounts that aggregate more than \$10,000 at any point during a calendar year are required to file an FBAR during the following year. If the failure to timely file an accurate FBAR was not willful and was instead the result of negligence, inadvertence, or mistake, the Secretary of the Treasury may impose a civil penalty "not to exceed \$10,000." Separate statutory provisions provide more severe penalties for willful failures to file FBARs and specify that no penalties apply if the failure to file was due to reasonable cause.

In this case, the Court of Appeals for the Fifth Circuit approved non-willful FBAR penalties for each bank account that was not reported, rather than applying one non-willful FBAR penalty for each untimely annual FBAR. According to Armando Gomez, President of the College, "Reason dictates that a non-willful 'violation' refers to a failure to timely file an accurate FBAR, not to each separate failure on a single FBAR. When the Ninth Circuit Court of Appeals issued its opinion adopting the per form approach, the Court of Appeals cited favorably an amicus brief filed by the College in that case that pointed out the conflicting guidance from the IRS."

As Caroline D. Ciruolo, who appeared as counsel of record for the College, explained, "U.S. persons are entitled to clear, unambiguous, and reasonable interpretations of penalty statutes. The per account approach to non-willful FBAR penalties adopted by the Fifth Circuit results in penalties that can grossly exceed the penalties applied to taxpayers who willfully and intentionally violated their legal duty to file an accurate FBAR."

You can read the brief on the College's website by following [this link](#).

#### About Amicus Briefs

A brief by Amicus Curiae ("friend of the court"), known familiarly as an amicus brief, allows a person or organization with a strong interest in or important views on the subject matter of a case to file a brief explaining those views and urging the court to rule in a manner consistent with those views. Amicus briefs are often filed in cases of broad public interest and are filed with the permission of the court and typically, as in this instance, with the consent of all the parties in the case. The College's brief in this case was submitted by its governing Board of Regents, represented by attorneys Caroline D. Ciruolo, Megan L. Brackney, Garrett L. Brodeur, and Caroline Rule of the law firm Kostelanetz & Fink, LLP in Washington, D.C.

#### About the American College of Tax Counsel

The American College of Tax Counsel, founded in 1981, is a nonprofit association of tax lawyers in private practice, law school teaching positions, and government, who are recognized for their excellence in tax practice and their substantial contributions and commitment to the profession. One of the chief purposes of the College is to provide a mechanism for input by tax attorneys into the development of U.S. tax laws and policy. A Board of 19 Regents serves as the governing body of the College, with one regent drawn from each of the 13 federal judicial circuits, plus two at-large positions. The Board is rounded out by the four members of the Executive Committee – President, Vice President, Secretary-Treasurer and Last Retiring President. The College can be found online at <http://www.actconline.org>.

Pamela Lyons

American College of Tax Counsel

+1 888-549-4177

[email us here](#)

---

This press release can be viewed online at: <https://www.einpresswire.com/article/587588211>

EIN Presswire's priority is source transparency. We do not allow opaque clients, and our editors try to be careful about weeding out false and misleading content. As a user, if you see something we have missed, please do bring it to our attention. Your help is welcome. EIN Presswire, Everyone's Internet News Presswire™, tries to define some of the boundaries that are reasonable in today's world. Please see our Editorial Guidelines for more information.

© 1995-2022 Newsmatics Inc. All Right Reserved.