

March 2023

*Client Advisory*

## **New U.S. Supreme Court Decision is a Big Win for Taxpayers Who Unintentionally Failed to File Reports of Foreign Bank and Financial Accounts**

On February 28, the United States Supreme Court handed down an important ruling that will have a significant impact on taxpayers who had been penalized by the IRS for unintentionally failing to file reports identifying their foreign financial accounts. As a result, some taxpayers who previously paid those penalties may be entitled to a partial refund if they take legal action.

The Federal Bank Secrecy Act (“BSA”) requires taxpayers to file an annual Report of Foreign Bank and Financial Accounts (commonly referred to as an “FBAR”) with the IRS that identifies certain types of foreign bank and financial accounts. If the taxpayer fails to do so properly, the BSA authorizes the IRS to issue penalties, which are different depending on whether the IRS alleges that the failure was willful (intentional) or non-willful (unintentional). In the case of non-willful failures, the IRS had interpreted the BSA to allow it to impose penalties of up to \$10,000 per year for each account that the taxpayer failed to accurately or timely report on the FBAR form.

While many taxpayers elected to pay the penalties without challenge, Archer and other law firms helped clients challenge that interpretation. In a case that set precedent in New Jersey in 2021, Archer attorneys Mark Oberstaedt and Kenneth Ahl successfully argued to the United States District Court that the BSA allowed the IRS to only impose penalties on a per-form basis, regardless of how many accounts the taxpayer should have disclosed on the FBAR form, a decision which substantially reduced the amount of the penalty.

But decisions around the country were inconsistent, which led the United States Supreme Court to consider the issue from a Texas case called *United States v. Bittner*. In yesterday’s Bittner decision, the Supreme Court ruled in favor of the taxpayer and held that the BSA authorized the IRS to impose penalties for non-willful violations on a per-form basis only, which reduced Bittner’s penalty from over \$2.7 million to just \$50,000.

Following the Bittner decision, taxpayers who previously paid non-willful FBAR penalties on a per-account basis may be eligible for a partial refund. If you may be eligible for a refund, you may reach out to Mark Oberstaedt at 856-354-3072 or [moberstaedt@archerlaw.com](mailto:moberstaedt@archerlaw.com) or Kenneth Ahl at 215-246-3132 or [kahl@archerlaw.com](mailto:kahl@archerlaw.com) for further assistance.

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