IRS targets foreign accounts with big fines

Supreme Court ruling creates good AND bad news for taxpayers

The IRS is aggressively pursuing foreign reporting compliance, including the levying of fines and penalties even in situations where a taxpayer makes an inadvertent oversight.

In a recent case, the IRS assessed a $2.72 million penalty to Alexandru Bittner, a Romanian-American immigrant and dual citizen who lived overseas. Bittner had no U.S. tax obligation, but was unaware that even if not living in the U.S., he still needed to report all foreign accounts annually on a U.S. tax return.

But a recent U.S. Supreme Court ruling knocked this fine from $2.72 million to $50,000. Here's what happened.

Background: Bittner v. United States, 21-1195 (2023)

Bittner was a dual citizen living abroad, and was unaware of his U.S. reporting obligation because he had no U.S. income. When he realized he needed to file a report of foreign bank and financial accounts (FBAR) for tax years 2007 through 2011, Bittner reported only his largest foreign bank account to the IRS as part of his annual tax return filing. After hiring a new accountant in 2011, Bittner learned he should have reported ALL his foreign accounts to the IRS. He subsequently reported all the omitted accounts, 272 in total.

The law imposes a $10,000 fine for non-willful delinquency, which Bittner interpreted as $10,000 per report. Since there were 5 tax returns over 5 years with incomplete foreign account information, Bittner expected his fine to be $50,000.

The IRS, though, fined Bittner $10,000 *PER ACCOUNT*. The total was a staggering $2.72 million for an accidental oversight that was immediately fixed once discovered.

Results

The U.S. Supreme Court ruled in favor of Bittner, stating that the law's intent was to assess a $10,000 fine per missing report.

Historically the IRS had regulatory procedures put in place that reduces the $10,000 fine to $500 for non-willful violations. But now a July 6, 2023 internal IRS memo instructs all field agents to delete the lower $500 fine and instead levy the $10,000 for all non-willful violations. The implication is that the IRS lost the case, but sees the Supreme Court ruling as an opportunity to effectively penalize everyone to a higher degree for honest omissions.

The lesson for everyone

File required reporting if you have foreign accounts! This is especially true for dual citizens that no longer live in the United States. It appears that the IRS will continue its aggressive enforcement not just for FBAR reporting, but for all foreign-related assets and income.

And despite this Supreme Court victory, most previous lower court rulings in FBAR-related matters have sided with the IRS.

So if you have any assets in a foreign country or have foreign bank accounts, be sure you are reporting these assets correctly and call immediately should you have any questions or concerns. ❑

Year-End 2023: This newsletter is issued annually to provide you with information about minimizing your taxes. Do not apply this general information to your specific situation without additional details. Be aware that the tax laws contain varying effective dates and numerous limitations and exceptions that cannot be summarized easily. For details and guidance in applying the tax rules to your individual circumstances, please contact us.

TAX PLANNING INSIGHTS

Year-End 2023

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Dear Clients and Friends,

Time is running out to be proactive about cutting your 2023 tax bill, as many tax planning strategies must be in place by December 31st. To help with your year-end planning, a recap of key changes to the tax code for 2023 is included in this issue.

Also find out how to audit proof your tax return, the tax benefits of a donor advised fund, and why it's more important than ever that you understand the reporting requirements for foreign accounts.

These insights are sent as a reminder of our commitment to help you minimize your taxes. Please call if you have any questions about tax planning for your 2023 return.

What's New in 2023

Here are some key changes to the tax code for 2023. Use this information to help understand your 2023 tax obligation and how it may change from last year's return.

New in 2023

- **Increased age for required distributions.** If you turn 72 in 2023 or later, you can keep money in a tax-deferred IRA or 401(k) for another 12 months to help the account continue growing before starting to withdraw funds. This retirement benefit is now available thanks to the required minimum distribution age being raised from age 72 to age 73.

- **Decreased penalty if required distributions aren't taken.** The penalty for failing to take a required minimum distribution is reduced from 50% to 25%. If the correction is generally made within two years, the penalty is further reduced to 10%.

- **Tax credit for new clean vehicles.** A credit up to $7,500 is available if you (or your business) buy a new, qualified plug-in electric vehicle or fuel cell electric vehicle. Your modified adjusted gross income must not exceed:
  - $300,000 for married couples filing jointly
  - $225,000 for heads of households
  - $150,000 for all other filers

- **Tax credit for used clean vehicles.** A credit up to $4,000 is available if you buy a previously owned, qualified plug-in electric vehicle or fuel cell vehicle, including cars and light trucks. In addition, your modified adjusted gross income (AGI) must not exceed:
  - $150,000 for married couples filing jointly
  - $112,500 for heads of households
  - $75,000 for all other filers

  You can use your modified AGI from the year you take delivery of the vehicle or the year before, which ever is less.

- **Tax credit for energy efficient home improvements.** An annual tax credit up to $1,200 is available if you make qualified energy improvements to your home (biomass stoves and boilers have a separate annual credit limit of $2,000). This has no lifetime dollar limit, which means you can take this credit every year that you make eligible improvements.

- **Form 1099-K.** This year you may receive an unfamiliar 1099-K tax form. This form shows the gross amount of payments received by you from payment transactions like credit cards or digital payment services like PayPal or Venmo. You'll receive a 1099-K from each payment service provider from whom you receive more than $600.

If you receive a 1099-K, you are considered to be a business. The revenue on the 1099-K must be reported on your tax return, but you also can include any related business expenses to reduce the reportable income, so you may need to include a Schedule C with your 2023 Form 1040. ❑

Tax benefits of a donor advised fund

A donor advised fund (DAF) uses a third-party entity to manage the charitable contributions of individuals, families, and organizations. You deduct the contributions on your tax return in the year you provide the funds to the DAF, but you can then donate to qualified charities from the DAF over any number of years. Here are some benefits of using a DAF:

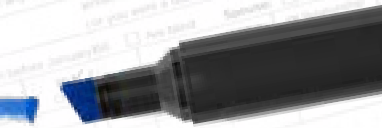
Bunch deductions
Figure what you normally donate to charities in a year, then multiply this number by two or more years. Make this entire contribution to the DAF in one year and plan on itemizing deductions in that year, then use the standard deduction in the other years.

Immediate tax deduction
Funding your DAF in a year with higher income will have a bigger impact on your income taxes.

Donate long-term appreciated assets
By funding your DAF with long-term assets that have appreciated in value, you still get the tax benefit of not being taxed on the gain AND you receive the charitable deduction.

Your fund will continue to be invested
Any money that remains in the DAF will continue to be invested under your direction and can grow in value to help future donations! Remember that once donations are made to your DAF, the money cannot be retrieved. It must be used for qualified charities. ❑

Hints to *audit proof* your tax return



Audit rates for individuals are at historic lows. Overall, the rate is down to a minuscule 0.9% for 2020.* However the Inflation Reduction Act, signed into law in 2022, gives the IRS more resources for auditing upper-income taxpayers. Knowing this, here are several tips to help make your tax return audit proof:

☑ **Assemble the required documentation before filing your return.** Not only does this avoid last-minute scrambling during an audit, contemporaneous records are often required by the IRS. For example, you must keep a detailed log for business-related driving in your vehicle and document monetary charitable contributions of $250 or more. Remember that it will be far easier to gather the records as they occur rather than scramble to collect the necessary documents after-the-fact.

☑ **Identify the focus points.** Don't wait for the IRS to send you a letter informing you that you've been chosen for an audit. Instead, conduct a self-audit of your tax return each year. Identify items that, if challenged, will require documentation. Consider obtaining transcripts from the IRS and compare them with your return to ensure they match. You might even wish to visit irs.gov and compare IRS statistics to your return to see if anything on your tax return might stick out.

☑ **Back up your deductions.** When reviewing your projections for 2023, you may identify certain areas of your tax return that could raise a red flag with the IRS, such as higher-than-usual home office deductions or vacation home rental losses. For these deductions that the IRS may challenge, be sure to have proof to back up your claimed expenses. The key here is meeting the ordinary and necessary threshold for each expenditure.

☑ **Obtain independent appraisals.** If you've donated appreciated property to charity, you can generally deduct its current fair market value if you've owned the property longer than one year. But the IRS still requires independent appraisals by qualified professionals for property valued above $5,000. Use a reputable appraiser for the type of property donated.

Please call if you'd like more information on making your tax return audit proof from the IRS. ❑

* ***Source:*** *IRS Examination Coverage, Table 17, 2012-2020*