U.S. v. WILLIAMS, Cite as 114 AFTR 2d 2014-5036, Code Sec(s) 6011; 7401; 7403; 6011; 7401; 7403, (DC VA), 06/26/2014

UNITED STATES OF AMERICA, PLAINTIFF v. J. Bryan WILLIAMS, DEFEN DANT.
Case Information:

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Code Sec(s):	6011; 7401; 7403, 6011; 7401; 7403
Court Name:	U.S. District Court, Eastern Dist. of Virginia,
Docket No.:	Civil Action No. 1:09-CV-00437,
Date Decided:	06/26/2014.
Prior History:	On remand from (2012, CA4) 110 AFTR 2d 2012-5298, 2012-2 USTC ¶50475, reversing and remanding (2010, DC VA) 106 AFTR 2d 2010-6150, 2010-2 USTC ¶50623. Earlier proceeding at (2010, DC VA) 106 AFTR 2d 2010-5158.
Tax Year(s):	Year 2000.
Disposition:	Decision for Govt.

HEADNOTE

1. District court procedure and standard of review—appeals and remands—review of IRS determination—Administrative Procedure Act—report of foreign bank and financial accounts; penalties. On remand, district court determined that it could review amount of FBAR penalties IRS imposed on taxpayer. However, that was only issue to be decided and standard of review wasn't de novo, but rather abuse of discretion under APA.

Reference(s): ¶ 74,336.504(50)

2. Report of foreign bank and financial accounts—failure to file—penalties—assessment and collection—enforcement—Administrative Procedure Act. On remand, district court upheld IRS's determination to impose statutory maximum penalties on taxpayer for his willful failure to file FBARs: although IRS had discretion to impose penalties in lesser amount, it was also within its discretion in imposing maximum amounts where such reflected reasoned decision made after considering relevant factors, including that taxpayer's case involved significant amount of money.

Reference(s): ¶ 60,115.01(5)Code Sec. 6011;Code Sec. 7401;Code Sec. 7403

FBARs

OPINION

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA Alexandria Division,

ORDER

Judge: Liam O'Grady United States District Judge

In April 2009, the United States brought a civil action in the Eastern District of Virginia against J. Bryan Williams to collect $200,000 in civil penalties assessed against him by the IRS for failing to file a Foreign Bank Account Report ("FBAR") form for his two foreign accounts during the tax year 2000. This Court held a bench trial on April 26, 2010, and thereafter reviewed supplemental briefs from the parties. On September 1, 2010, the Court ruled in favor of Mr. Williams, finding that the government failed to meet its burden of establishing that Williams's violations under 31 U.S.C. § 5314 were willful.

The United States appealed to the Fourth Circuit Court of Appeals, and on July 20, 2012 the Fourth Circuit reversed. The Fourth Circuit held that Williams willfully violated Section 5314 by signing his 2000 federal tax return. The court found Williams's signature "prima facie evidence that he knew the contents of his return," Op. at 12, and concluded that he was also on notice of the FBAR requirement. The court held that Williams's admission that he did not carefully review the instructions on his federal tax return suggested a "conscious effort to avoid learning about reporting requirements," id. (citing United States v. Sturman, 951 F.3d 1466, 1476 (6th Cir. 1991)), and combined with his false answers indicated an intent to conceal his financial information. Because the Fourth Circuit found that this conduct constituted at least willful blindness to the FBAR requirement, it found that Mr. Williams's violations were willful and remanded for proceedings consistent with that opinion. Because the penalties imposed by the IRS were not an abuse of the agency's discretion, this Court now affirms the $200,000 in civil penalties imposed against Mr. Williams.

[1] Although the Government argues that the amount of the penalty assessed may not be considered on remand, this Court does review the penalty amount for abuse of discretion under the "arbitrary and capricious" standard of the Administrative Procedure Act. 5 U.S. § 706. The Court rejects Defendant's contention that the Fourth Circuit's remand for "further proceedings" is an invitation to engage in de novo review of the penalty amount. Although some courts have held in similar contexts that de novo review is appropriate when the issue of a defendant's underlying tax liability is at issue, see, e.g., Dogwood Forest Rest Home, Inc. v. United States , 181 F. Supp. 2d 554, 559 [89 AFTR 2d 2002-728]–60 (M.D.N.C. 2001) (collecting cases), the Fourth Circuit has already ruled on the issue of Mr. Williams's liability in this case. On remand, it has been established that Williams is eligible for the FBAR penalties, including the penalties for willful violations. Because review of the penalty amount is the only remaining issue in this case, the appropriate standard of review is abuse of discretion.[1]

[2] Courts have specifically found that an agency's selection of a penalty is "the exercise [pg. 2014-5038] of a discretionary grant of power, and is to be reviewed only for abuse under an arbitrary and capricious standard of review." Ekanem v. Internal Revenue Service, 1998 WL 773614 [81 AFTR 2d 98-1173], at 1 (D. Md. 1998). Under that narrow and deferential standard, the Court must not substitute its judgment for the agency's, and must only review the record to ensure that the agency engaged in reasoned decision-making and that there was a "rational connection between the facts found and the choice made." Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto Ins. Co., 463 U.S. 29, 43 (1983) (quoting Burlington Truck Lines, Inc. v. United States, 371 U.S. 156, 168 (1962)).

In this case, the two $100,000 penalties issued by the IRS were within the range authorized by Congress in 31 U.S.C. § 5321(a)(5)(C) for willful violations. Although the IRS may impose a lower penalty where the violating taxpayer meets certain criteria, see U.S. Br. at 6, such departures are within the discretion of the agency. The Internal Revenue Manual states that in assessing penalties, examiners "exercise discretion" in determining "the total amount of penalties to be asserted," and also states that examiners are to consider the facts and circumstances of each case when making that determination. The Manual clarifies that the penalties are determined "per account," and not per person or per unfiled FBAR. IRM § 4.26.16.4. The Manual specifically lists "[t]he nature of the violation and the amounts involved" and "[t]he cooperation of the taxpayer during the examination" as among the factors that an examiner should consider. However, it also warns that "given the magnitude of the maximum penalties permitted for each violation, the assertion of multiple penalties ... should be considered only in the most egregious cases." IRM § 4.26.16.4.7.

Although Defendant argues that the imposition of two maximum penalties is not warranted in this case, the Court finds that there is sufficient evidence in the record to demonstrate that the $200,000 penalty was the product of reasoned decision-making and consideration of the appropriate factors. While there is no evidence from which the Court can conclude that the penalties were assessed for an improper purpose, the IRS's letter to Mr. Williams bolsters the conclusion that the agency made a reasoned decision after considering the relevant factors. See Def. Ex. 29. Reviewing the IRS's decision under an abuse of discretion standard, this Court cannot simply substitute its judgment for that of the agency. Although the Internal Revenue Manual does state that multiple maximum penalties are for "egregious" cases, it would not be arbitrary and capricious for the IRS to find that the amount of money involved in this case justified the imposition of maximum penalties. Therefore, it is hereby ORDERED:

- (1.) The two Report of Foreign Bank Accounts ("FBAR") penalties assessed against Mr. Williams under 31 U.S.C. § 5321(a)(5)(C), totaling $200,000, are AFFIRMED.

June 26, 2014

Alexandria, Virginia

Liam O'Grady

United States District Judge

[1] Although the only other court to have considered the appropriateness of an FBAR penalty

amount did not specifically identify a standard of review, it reviewed the penalty with great deference to the judgment of the agency. In United States v. McBride, 908 F. Supp. 2d, 1186, 1214 [110 AFTR 2d 2012-6600] (D. Utah Nov. 8, 2012), the court affirmed two maximum penalties after determining that they were within the range authorized by Congress. The court did not consider the propriety of the penalty amounts, simply stating that the penalties were authorized by the statute and "[a]ccordingly ... were proper."

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