'Cross-border royal baby tax compliance'

By **Roger Russell**
Published **May 21 2019, 9:29am EDT**

More in **FBAR, Tax forms, Tax planning, IRS**

A recent decision in the U.S. District Court for the Central District of California may have a cautionary impact on Archie Harrison Mountbatten-Windsor, the son of Prince Harry and American Meghan Markle, currently the seventh in line to the British throne.

The little prince, born May 6, 2019, is automatically a dual citizen, and won't be able to renounce his U.S. citizenship for some years. And as a U.S. citizen, he is subject to the FBAR filing requirements, among other provisions of the U.S. Tax Code.

The decision in *U.S. v. Boyd*, filed April 23, 2019, granted summary judgment to the Internal Revenue Service in penalizing the taxpayer, Jane Boyd, for her failure to file a Foreign Bank and Financial Accounts, or FBAR, form for each of her accounts in the U.K. In assessing the 13 separate FBAR penalties against Boyd, the IRS treated each account that was not listed on a timely filed FBAR as a separate, non-willful violation. The amount of each FBAR penalty was computed based on the highest balance contained in the account during 2010.

"The language of the FBAR rules limits the penalty up to $10,000 on any person -- but it's not explicit as to whether it applies on a per-year or per-account basis," said Becca Chappell, of counsel at law firm Venable LLP. "Historically, it's been interpreted to mean

'per year,' but the IRS has reserved the right to apply it on a per account basis."

The district court acknowledged some ambiguity in the statute, but said the "more reasonable" interpretation was to apply it on a "per account" basis.

Bloomberg News

"Defendant argues that the plain language of [the code language in question] supports her position that a non-willful penalty for a given year cannot exceed $10,000. Defendant argues further that had Congress intended to impose a penalty based on each bank account required to be shown on the FBAR, Congress could have easily included such explicit language," the judges wrote in their opinion. "The court disagrees with defendant that the relevant statutory language clearly supports her position. Rather, the Court views [the statute] as somewhat unclear as to whether the $10,000negligence penalty applies per year or per account."

"Nonetheless, given the relevant language the government highlights … the court determines that the government has advanced the more reasonable interpretation," they

concluded.

It may seem more reasonable to the court, but it seems very unreasonable to taxpayers seeking to comply with a myriad of confusing requirements to be penalized in such extreme fashion. Shouldn't ambiguity be resolved in favor of a non-willful taxpayer?

"It's a procedural issue, and it's easy for someone to overlook when they're thinking about annual compliance," said Chappell. "But the risk is very material even for an inadvertent failure to file."

"This ruling will likely apply to many people, because people often have multiple accounts. It's a relevant risk for them," Chappell said. "I don't think her actions were deliberate, but the ruling is consistent with an overall global trend toward transparency with respect to financial information."

"This case underscores the urgency for practitioners to make sure that they annually ask all clients if they have any foreign accounts or foreign assets," said New York-based CPA Vincent O'Brien, of Vincent J. O'Brien CPA PC. "In today's global economy, such accounts are more and more common, and the penalties for failing to meet the reporting requirements are severe."

"This may be the beginning of a trendy new tax niche — cross-border royal baby tax compliance," said Chappell.

Roger Russell