

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

*National association of tax lawyers urges Supreme Court to hear case regarding multiple penalties for failure to file reports of foreign bank accounts.*

ROCHESTER, NEW YORK, UNITED STATES, April 5, 2022 /EINPresswire.com/ -- The American



Reason dictates that a non-willful 'violation' refers to a failure to timely file an accurate FBAR, not to a failure to report every account."

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

College of Tax Counsel (the "College") announces the filing on April 1, 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 filed the amicus brief in support of the petition and seeks a reversal of 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, as stated in court documents, 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 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 conflict in the courts on this issue means that U.S. persons who have non-willfully failed to report their financial interest in, or signatory or other authority over, foreign financial accounts will be assessed drastically different penalties depending on the jurisdiction in which they reside. The College filed the brief to request a definitive ruling by the Supreme Court to resolve the inconsistent treatment of U.S. citizens and residents.

## 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 hold 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 FBAR was not willful, for example, and was instead the result of negligence, inadvertence, or mistake, the Secretary of the Treasury (“the Secretary”) 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 penalties for each bank account that was not reported, rather than applying one non-willful penalty for each untimely annual FBAR form. 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 a failure to report every account. Taken to its extreme, the Fifth Circuit’s opinion could result in a separate penalty for every line item on an FBAR form. 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.”

The College encouraged the Supreme Court to grant the petition to ensure a uniform enforcement regime for FBARs. 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 inconsistent administrative guidance and the irreconcilable holdings of the Ninth and Fifth Circuits are resulting in drastically different penalties, depending only on the jurisdiction in which the filers reside. There is a clear need for the Court to step into the fray.”

### 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.

### About the American College of Tax Counsel

The American College of Tax Counsel 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. The College’s brief 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.

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/567562668>

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 IPD Group, Inc. All Right Reserved.