

FBAR AND OTHER FINANCIAL REPORTING CASES

Selected Cases Show Wide Range of Violations and Penalties

This document contains a selected list of FBAR and other financial reporting penalty cases, some of which are ongoing and others concluded. AARO's Banking Committee Chair, Paul Atkinson, compiled this information from publicly available sources such as legal pleadings and judgments, newspaper accounts, journals, industry publications, legal blogs, etc. and, with the assistance of AARO President Doris Speer, prepared this document for AARO members. This list of cases is not comprehensive but a selection intended to provide AARO members with a sense of the breadth of the FBAR penalty landscape.

We have the following general observations about the cases on this list:

1. Although several cases concern wealthy people trying to avoid their tax obligations, many on this list are not wealthy.
2. The FBAR penalties seemed disproportionate to any underlying tax violations in several cases.
3. The IRS made mistakes in its calculation of penalties, which is why penalties were later reduced in some cases.
4. Some people relied on advisors who gave erroneous advice to the detriment of the client, resulting in penalties. This could be partially explained by the fact that the requirement for the FBAR is not part of the tax code and, years ago, FBAR obligations were not as well publicized as they are today.
5. Tax preparation software, used by filers and their advisors alike, caused mistakes by their default settings (automatic "no" in Schedule B box), leading to failures to file FBARs. Filers should verify their tax returns, even if prepared by professionals.
6. Several cases involved extended families and persons who lived across borders, U.S. residents as well as non-residents.
7. In several cases, the accounts were received as inheritances or gifts.
8. Although the IRS discovered delinquent FBAR filers in a variety of ways (audit, etc.), several persons were assessed penalties after having entered into voluntary disclosure programs. A short note on the IRS voluntary disclosure programs is presented at the end of this document.

The cases are presented in two ways:

- A Summary Table that gives a snapshot of the cases. The Summary Table is organized in no particular order.
- A short Synopsis of the facts of each case, summarizing the information that we have found. These Synopses may be fragmentary and/or narrowly focused due to the source. Also, information regarding ongoing cases is current only as of the date of this document and may change thereafter as those cases progress.

SUMMARY TABLE

	NAME	PENALTY AMOUNT ¹	TYPE OF PENALTY	RESIDENCE	ACCOUNT LOCATION	HOW IRS FOUND OUT	MISLED BY ADVISOR?	COMMENTS
1.	Patricia d'Addario	\$78,000	FBAR	Canada	Canada	Voluntary disclosure	Yes	
2.	Milo & Lois Kentera	\$90,000, reduced to \$51,000	FBAR	U.S.	Switzerland	Voluntary disclosure	Yes	3 accountants, none of whom told him about FBAR. Reported 23 times on Schedule B
3.	Walter Schik	\$8.8 million	FBAR	U.S.	Switzerland	Unclear	Yes	Accountant's software: Schedule B box auto-filled "no" by default
4.	Hsuehh-Hsin Chen-Baker	\$127,000, reduced to \$109,000	FBAR, 8938 and 3520	U.S.	Hong Kong	Voluntary disclosure	No	Non-willful case. Associated tax for those years was only \$25
5.	Monica Toth	\$3.1 million	FBAR	U.S.	Switzerland	Filed back FBARs; IRS audit of tax returns	No	Deemed willful. 8th Amendment argument which SCOTUS refused to hear in January 2023. See AARO article Bittner and Toth
6.	Alice Kimble	\$377,000 raised to \$697,000	FBAR	U.S.	Switzerland & France	Voluntary Disclosure	No	Deemed willful. She did not review her returns
7.	Alexandru Bittner	\$2.7 million, reduced to \$50,000 by SCOTUS	FBAR	Romania & U.S.	Switzerland, Lichtenstein & Romania	Filed back taxes and back FBARs	No	Non-willful. Supreme Court held that penalties to be calculated on a "per form" basis. See AARO article Bittner and Toth
8.	Jane Boyd	\$47,279, reduced to \$10,000	FBAR	U.S.	UK	Voluntary Disclosure	No	Non-willful. 9th Circuit held FBAR penalties calculated on "per form," not "per account" basis, agreed to by SCOTUS in Bittner

¹ At times, penalty amounts include penalties and interest accrued on the initial penalty for those who didn't pay.

	NAME	PENALTY AMOUNT ¹	TYPE OF PENALTY	RESIDENCE	ACCOUNT LOCATION	HOW IRS FOUND OUT	MISLED BY ADVISOR?	COMMENTS
9.	Pilar Molyneux	\$400,000	FBAR	U.S. & France	France	Had previously filed and stopped	No	Clear willful case; stopped filing FBARs. Penalty calculated on "per account" basis
10.	Arthur Bedrosian	\$976,000, raised to \$1.3 million	FBAR	U.S.	Switzerland	Swiss bank agreement to give customer information	No	Deemed willful under expanded definition. Petition filed with Supreme Court on definition of "willful"
11.	Natalio Valderrama	\$40,000 raised to \$44,250	FBAR	U.S.	Switzerland	Voluntary disclosure	No	Deemed non-willful.
12.	Krystof Wrzesinski	\$207,500, reduced to \$41,500, reduced to \$0	Form 3520	U.S.	N/A	Voluntary disclosure	Yes	Fine reduced to zero based on his persistence
13.	Lavern/George Gaynor	\$18.4 million	FBAR	U.S.	Switzerland		No	Willful. Issue of survivability of fines at Lavern's death not yet resolved
14.	Robert Smith	\$83 million	FBAR	U.S.	Switzerland & BVI	Whistleblower: Tax evasion	No	Had non prosecution agreement and turned against partner Brockman
15.	Robert Brockman	Not determined	N/A	U.S.	Bermuda & Switzerland	Whistleblower: Tax evasion	No	Would have had serious FBAR fines but died before trial
16.	Isac Schwarzbaum	\$221,000, increased to \$35 million, reduced to \$13.7 million, plus penalties and interest	FBAR	Germany, Switzerland, Spain and Costa Rica	Switzerland & Costa Rica	IRS investigation	Yes	First deemed non-willful, then willful. 3 different accountants, all misled him. Also, one accountant's software auto filled "no" in Schedule B box by default. Lost his 8 th Amendment argument in 11 th Circuit
17.	Stephen Kerr	\$3.8 million, reduced to \$2.2 million	FBAR	U.S.	Switzerland	Through tax lawyer	No	Convicted for false tax returns and FBAR willful violations

	NAME	PENALTY AMOUNT ¹	TYPE OF PENALTY	RESIDENCE	ACCOUNT LOCATION	HOW IRS FOUND OUT	MISLED BY ADVISOR?	COMMENTS
18.	Michael Quiel	None. Acquitted at trial	N/A	U.S.	Switzerland	Through tax lawyer	No	Convicted for false tax returns, acquitted on violation of FBARs
19.	Timberly Hughes	\$678,900, reduced to \$238,000, raised to \$343,298	FBAR	U.S. and/or New Zealand	New Zealand	IRS investigation	No	Willful for some failures, non-willful for others. "Reckless conduct" standard used for willful determination
20.	Paul Manafort	\$3.15 million	FBAR	Mainly U.S.?	Cyprus, UK, St. Vincent	Tax fraud	No	Presidential pardon irrelevant to civil fine for FBAR violations
21.	Alberto and Estella Aroeste	\$3 million	FBAR	At issue: Mexico or the U.S.	Mexico? Not clear	Tax audit	No	Mexico/U.S. tax treaty issue: Whether he was a "United States person" or not
22.	Dennis Wayne Brite	A minimum of \$523,000	Taxes and/or FBAR	U.S.	Belize & St. Vincent	Not clear	No	Tax evader on 410k distribution; currently under indictment

SYNOPSIS OF EACH CASE

1. Patricia d'Addario: d'Addario, an elderly, disabled woman married to a Canadian, moved to Canada in 1988. She spent a cumulative \$42,000 for professional U.S. tax preparation, and never owed U.S. taxes due to the exclusion and credits. In 2009, she saw a newspaper article referring to FBAR, voluntarily disclosed, paid another \$24,000 in accountant fees to become compliant. She was assessed a \$78,000 FBAR penalty.
2. Milo and Lois Kentera: Milo inherited a small Swiss bank account in 1984. He had 3 accountants: one until 2006, the second from 2007-2009 and the third from 2010 onwards, none of whom told him about the FBAR even though Milo disclosed the account and associated income to them and the first and third accountants even reported the interest on the foreign account on 1040 Schedule B (for 23 years). Until 2004 the account was less than \$10,000; it increased to \$10,000+

commencing in 2005. Made aware of FBAR by a radio program, Milo voluntarily disclosed (under OVDI²), was assessed FBAR penalties of \$90,000, and then withdrew from the voluntary disclosure program. The fine was reduced to \$51,000.

3. Walter Schik: Schik, a Holocaust survivor, opened an account with UBS in Switzerland in the late 1950's to deposit monies received from relatives who perished in the Holocaust. While doing his tax return in 2007, Schik was not aware that had to disclose that he had a foreign bank account, and the accountant did not ask. His accountant's software automatically ticked the box "no" in Schedule B³ by default. Schick did not review the return. He learned about FBAR through publicity of the non-prosecution agreement with UBS. He was assessed a \$8.8 million FBAR penalty. The case is ongoing; the IRS was remanded to trial to address the issue of willfulness.
4. Hsuehh-Hsin Chen-Baker: Chen-Baker's father opened an account in Hong Kong with her name on it in 2009 for use by the Chinese extended family. She did not receive any statements, did not know the balances, did not know when her father deposited or withdrew money, and never deposited money into the account herself. In 2015, Chen-Baker became aware of FBARs and the need to report interest on the account on her tax return. She engaged professional help to file 5 years of back FBARs and restated tax returns for 2012-14 under an offshore voluntary disclosure program (OVDP), and paid cumulative additional taxes of \$25. Her fines were related to FBARs (non-willful), and Forms 8938 and 3520. She was assessed fines of \$127,000, which were reduced to \$109,000.
5. Monica Toth: Toth's father, a Holocaust survivor, made a fortune post-war in Argentina and gifted his Swiss account to Monica in 1999 before he died. She did her own taxes with mixed accuracy using forms from the town library, filed a partially completed FBAR in late 2010. IRS audited, found errors of both over- and under-statement of tax obligations. Toth settled net tax arrears and penalties for about \$40,000. IRS then levied an FBAR fine of \$2.2 million, claiming willfulness, plus \$1 million in late fees and interest, for a total of \$3.1 million. She sued on 8th amendment grounds, lost, appealed to the Supreme Court, who refused to hear it. See AARO article [Bittner and Toth](#) discussing the Court's refusal to hear her case and Justice Gorsuch's dissent.
6. Alice Kimble: Kimble's mother and father included Alice as joint owner of an account in Switzerland (UBS) prior to 1980 as insurance against another Holocaust persecution, instructed her not to use it and to maintain its secrecy. She also opened a smaller HSBC account in France. She never used the UBS account and never declared income on the accounts. Her

² Offshore Voluntary Disclosure Initiative.

³ The question for this box is "At any time during [year], did you have a financial interest in or signature authority over a financial account (such as a bank account, securities account, or brokerage account) located in a foreign country?"

husband prepared her tax returns and, following her divorce, an accountant did so. She did not review them. She was apparently unaware of reporting obligations, including FBARs, until 2008, when she read a newspaper article about the UBS tax fraud. In 2009, she applied for an IRS offshore voluntary disclosure program (OVDP) and filed her taxes, which indicated a material underpayment of tax (about \$100,000 total for 2003-8). The tax situation was settled and FBAR fines of \$377,000 were imposed. She withdrew from the program and the IRS determined the violation was willful, imposing FBAR penalties of \$697,000.

7. Alexandru Bittner: Bittner was a Romanian immigrant who became a U.S. citizen and returned to Romania after the end of the Cold War. He was a successful businessman who had personal financial accounts as well as multiple accounts held by businesses in which he owned stock. He was unaware of reporting requirements. He then back-filed U.S. taxes and FBARs. He was fined \$2.7 million for (non-willfully) not filing FBARs, on a “per account” basis. The case went to the Supreme Court, which decided 5-4 that FBAR fines should not be calculated on a cascading “per account” basis but on a “per form” basis, which meant that the maximum penalty for Bittner would be \$50,000, or \$10,000 for each of the 5 years in which he did not file FBAR reports. See AARO article [here](#) discussing the Supreme Court’s acceptance to hear the case and AARO article [Bittner and Toth](#) discussing the Supreme Court’s decision reducing the penalty to \$50,000.
8. Jane Boyd: Boyd had 13 U.K. accounts due to the receipt of a significant inheritance. She did not report interest or dividends, nor file FBARs for the year 2010. She entered an IRS offshore voluntary disclosure program (OVDP) and then withdrew from the program. The IRS determined that her failure was non-willful and fined her \$47,279 for 13 accounts, based on various formulae and counting each of the 13 accounts in the calculation. Boyd appealed to the 9th Circuit Court of Appeals, which reversed and held for her, holding that non-willful FBAR violation penalties must be counted on a “per form” basis not a “per account” basis. This is one of the two cases which led to the Supreme Court case in Bittner. The Supreme Court agreed with the Boyd approach.
9. Pilar Molyneux: Molyneux, the wife of a wealthy interior designer with ownership interest in his studio, split her time between New York and Paris. In 2014, she filed delinquent FBARs for 2005-2012 and a timely FBAR for 2013. However, she subsequently failed to file FBARs reporting two accounts in France: In 2014, they held an aggregate amount of \$29,300, and in 2015 they held an aggregate amount of \$65,000. This is the rare case of someone aware of FBAR obligations who failed to file the FBAR. Her failure was deemed willful and an FBAR fine of \$400,000 was imposed, equal to \$100,000 for each account for each year. As of December 2022, she had not paid and interest and penalties continue to accrue.

10. Arthur Bedrosian: Bedrosian was the CEO of a generic drug manufacturer. He opened an account with UBS in the 70s, and a second account in 2005. He closed them in 2008. There was disagreement in the record as to whether his accountant told him he had to report the accounts in 2006. He got a new accountant and filed an FBAR in 2007 for only one account (which held \$240,000), and not for the other (with \$2.3 million). The IRS found out about the larger account as a result of the agreement with Swiss banks to provide customers' account information, opened an investigation and assessed the maximum penalty for willfully filing an inaccurate FBAR, 50% of the balance of the account at the time of the violation (\$1.95 million, i.e., a penalty of \$976,000). The case turned on the characterizations of "willful" vs. "non willful," with the 3rd Circuit Court of Appeals holding for a more expansive view of "willfulness." Bedrosian's violation was deemed "willful" and he filed a petition (Writ of Certiorari) with the Supreme Court. The penalty has risen to \$1.3 million with additional penalties and interest. SCOTUS has not yet decided on the petition.
- An amicus brief filed with the Supreme Court quotes the following from a letter that Donald Rumsfeld, former Secretary of Defense, wrote to the IRS: "*The tax code is so complex and the forms are so complicated, that I know that I cannot have any confidence that I know what is being requested and therefore I cannot and do not know, and I suspect that a great many Americans cannot know, whether or not their tax returns are accurate.*"
11. Natalio Valderrama: Valderrama was born in Argentina, worked in Australia during the 1970s, was resident in the U.S. since 1987 and a U.S. citizen since 1991. He opened a Swiss account to avoid fluctuations in the value of the Argentine peso and closed it in 2010. His awareness of FBARs is unclear. The annual maximum amount in the years 2006-2010 ranged from \$150,000 to \$413,000. He did not file timely FBARs for 2006, 2007 or 2008. He filed an FBAR in 2009, not reporting any amount, and an FBAR in 2010 without including the Swiss account. He entered an IRS offshore voluntary disclosure program (OVDP) in 2014, and filed amended FBARs for 2006-10 in 2016. The IRS fined him \$40,000 for non-willful failure to file. The unpaid amounts have increased to \$44,250 due to accrued interest and additional penalties.
12. Krzysztof Wrzesinski: Wrzesinski was born in Poland and moved to the U.S. in 2005 at age 19. His mother won the lottery in Poland in 2010 and gave him a gift of \$830,000 in 4 transfers over the course of 2010-11. He twice relied on professional tax advice, was correctly told the gift was non-taxable but incorrectly told each time there was nothing to report. In 2018, he researched how to regift the money back to Poland and learned of a reporting requirement in his internet research. He filed Form 3520 for 2010 and 2011 under a voluntary disclosure program (DIIRSP⁴). The IRS sent him a bill for \$207,500, the highest possible penalty amount (25% of the gift received). Upon protest, an IRS appeals officer reduced the penalty to

⁴ Delinquent International Information Return Submission Procedures.

\$41,500. Wrzesinski filed a lawsuit in District Court in September 2022, and, in March 2023, the government conceded. No penalty.

13. Lavern/George Gaynor: Lavern was an heiress to a Texaco fortune. Her husband opened a Swiss bank account listing a Panamanian entity as beneficial owner in 2000. Laverne became the entity's owner upon the death of her husband in 2003. The account's maximum was \$34.6 million for the 3-year period 2009-2011. She was assessed an FBAR fine of \$18.4 million (50%) for willful violations. Lavern died in 2021. The Government filed suit against George, her son, as the representative of her estate. George claims that the fines died with Lavern. The issue in this case is whether the penalty survives the death of the non-filer, which depends on whether \$18.4 million is deemed to be remedial or penal.
14. Robert Smith and
15. Robert Brockman: Brockman and Smith were billionaire business partners. They set up offshore corporations in Bermuda and Nevis, which formed a partnership in the Cayman Islands, which held U.S. private equity funds. Brockman's Bermuda corporation was limited partner and Smith's Nevis corporation was general partner. Each offshore corporation was held through a family trust, so neither person had direct ownership. Large capital gains in the PE funds were distributed to the offshore partner corporations without withholding anything, which resulted in hiding from the IRS income on investments in the PE funds. The IRS discovered the scheme through a whistleblower (disclosed in connection with Smith's divorce – Smith was expensing his mistress). Smith tuned State's evidence and cut a deal. Brockman was suffering from dementia.
 - Robert Smith: Monies from the scheme were deposited into accounts in BVI and Switzerland. FBAR filings were not made. Smith sought to voluntarily disclose (OVDP) and was rejected. In 2014, Smith willfully filed a false FBAR for 2013. For tax years 2005-2014, Smith was found to have willfully evaded \$43 million in income tax, plus interest and penalties of \$13 million, and was assessed an FBAR penalty \$83 million. He had a non-prosecution agreement, so there was no prison.
 - Robert Brockman: Monies from the scheme were deposited into accounts in Bermuda and Switzerland. FBAR filings were not made. Brockman had untaxed gains of over \$2 billion, implying tax evasion of around \$400 million. Despite his dementia, he was prosecuted for both tax evasion and FBAR violations. Prison and large FBAR fines were likely but he died, so no trial was held.
16. Isac Schwarzbaum: Schwarzbaum was born in Germany and raised in Germany and Switzerland, his where parents lived. He became a U.S. citizen in 2000, but lived mostly outside the U.S. in Germany, Switzerland, Spain and Costa Rica. He

returned to the U.S. in 2016. All of his financial accounts in Switzerland were gifts from his wealthy father. He also had accounts in Costa Rica. He engaged a U.S. CPA to prepare his tax returns, who told him that his offshore accounts did not require any reporting. He took a new accountant, who incorrectly told him that FBARs were only required for offshore accounts with connections to the U.S. He did not question the advice as this was consistent with the laws in the countries where he lived. He changed accountants again, whose software defaulted to “no” on Schedule B. He filed a series of FBARs for some of his accounts over the years, using the “connection to the U.S.” as the basis for the filings. In 2009, he had a heart attack, 5 bypass operations, the death of his father and the birth of a daughter, so the FBAR for 2008 was not filed on time. The IRS examined his file in 2013 and 2014, deemed his failures “non willful” and assessed a fine of \$221,000. The IRS later reconsidered and deemed the failures “willful,” increasing the penalties to \$35.4 million, which were incorrectly calculated and therefore reduced to \$13.7 million (for 2006-2009), plus interest and penalties. The 11th Circuit Court of Appeals held that the 8th Amendment prohibition against excessive fines was not violated.

17. Stephen Kerr and

18. Michael Quiel: Kerr and Quiel were partners. Their tax attorney established a vehicle in Switzerland, ostensibly to raise European capital for their business of funding start-ups, using bank accounts at UBS in the names of nominees. Kerr and Quiel were prosecuted for conspiracy, filing false tax returns and not filing FBARs. Both were acquitted on the conspiracy charge, but were convicted for filing false tax returns. Apparently, no tax liabilities were involved, a fact apparently not known to the jury who convicted. Initially facing 35 years in prison, they received sentences of 10 months. The tax attorney, who set up the accounts, plead guilty to conspiracy, testified against his clients and later changed his name.

- Stephen Kerr: Kerr was convicted for willful failure to file FBARs. Kerr initially faced a \$3.8 million FBAR fine but, due to an IRS mistake in calculation, the fine was reduced to \$2.2 million.
- Michael Quiel: Quiel was acquitted for not filing FBARs for reasons that are unclear. In December 2022, Quiel sued the IRS, the prosecutor, the tax attorney, and others for \$135 million for malicious prosecution, abuse of process, RICO and more.

19. Timberly Hughes: Hughes, a bookkeeper for wealthy clients with some accounting and tax return experience, owned two businesses with accounts at ANZ in New Zealand. She failed to report earned interest on the accounts in 2010-2011 and did not file FBARs. In 2012 and 2013 she reported on her tax return that she had foreign accounts but did not file FBARs. She did her own tax returns. The IRS commenced an investigation. She did not contest a default judgment, claiming that she was unaware that this meant that she was agreeing to a willful penalty. Hughes’ failure to file FBARs was deemed willful for

2012-2013 and non-willful for 2010-2011. The California District Court discussed the split of opinions on whether reckless conduct is sufficient to show a willful failure to file an FBAR. Original penalty assessment was for \$678,900, based on a large and immediately reversed bank error, an initial determination of willfulness, and IRS miscalculations. The penalty was eventually reduced to \$238,000.

20. Paul Manafort: Manafort did consulting work in the Ukraine, with the income deposited into more than 20 accounts in Cyprus, St. Vincent (Grenadines) and the UK held in the names of nominee shell corporations. He was criminally charged with tax fraud and willful failure to file FBARs. He pled guilty to conspiracy, filing false tax returns and willful FBAR failures. He was sentenced to more than 7 years in prison, and was serving his term under home confinement when he received a Presidential pardon. Despite the pardon for his criminal convictions, the U.S. government could still impose civil penalties. The Justice Department filed suit in 2022 for willful FBAR penalties for 2012-2013 of almost \$3 million. Manafort settled for \$3.15 million.
21. Alberto and Estella Aroeste: The IRS audited the Aroestes' 2011-15 tax returns and assessed a \$3 million tax and penalty mainly for non-filing of FBARs for 2012 and 2013. There is a dispute over whether Alberto Aroeste should be regarded as a Mexican resident under the terms of U.S.-Mexico tax treaty. If Alberto were not a "United States person" he would not be required to file FBARs. The court recognized that the amount of the penalties, if any, which were apparently based on a "per account" basis, would be recalculated (reduced) based on the Supreme Court's decision in Bittner (which had not yet been decided). Subsequently, SCOTUS held that penalties should be calculated on a per form basis.
22. Dennis Wayne Brite: Brite withdrew \$1.4 million from a 401k account at Schwab in 2013, deposited it at Wells Fargo, and failed to report the taxable distribution. \$1.34 million of the 401k money at Wells Fargo was wired to one of two accounts at a bank in Belize. \$2.5 million was wired from the Belize bank to two accounts at an online bank doing business in St. Vincent (Grenadines). To open the online accounts, Brite used a false Belize passport to conceal his U.S. nationality. In 2017, Brite moved the \$2.5 million from the online accounts to a U.S. account at Fidelity. Some FBARs were filed for 2013-2017, substantially underreporting the amounts in the Belize accounts and not disclosing the online accounts. IRS special agents interviewed Brite. A federal grand jury indicted Brite in early 2023 for willfully attempting to evade income tax, failing to file accurate FBARs and making false statements to the IRS, with penalties requested of a minimum of \$523,000 (not clear how much would be attributable to tax liabilities and/or FBAR penalties).

A SHORT NOTE ON THE IRS' "AMNESTY" PROGRAMS

The IRS has offered several voluntary disclosure programs and streamlined filing procedures over the years, often referred to generically as "amnesty" programs. These programs were established to encourage Americans to come into compliance on their failure to comply with U.S. tax and information return obligations with respect to non-U.S. investments. As you can see above, many of the persons in this Summary Table voluntarily disclosed under such an IRS program.

The popular term "amnesty" is a misnomer as taxpayers are not assured of escaping all penalties and fines after voluntarily disclosing delinquent FBARs. A key criterion, among others, is whether the noncompliance could be proven to be non-willful. The programs currently in existence can be found on the IRS' website [here](#).