2022 Consumer Practice Extravaganza

International Asset-Protection Trusts: Fish or Fowl?

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CONCURRENT SESSION

2022

International Asset Protection Trusts: Fish or Fowl?

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American Bankruptcy Institute
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"I'm calling because I want you to help me protect my assets with a fancy offshore trust."

Bovitz' fundamentals of asset protection

Only property of a judgment debtor is available for enforcement of a judgment. For example, see California Code of Civil Procedure §695.010(a) ("all property of the judgment debtor is subject to enforcement of a money judgment").

Only property of a debtor becomes property of the bankruptcy estate. 11 U.S.C. §541(a)(1).

You can light cigars with $100.00 bills, endow a professorial chair to your alma mater, or set up and fund the ***Brager, Newburgh, Furr, Bovitz, and Bill & Melinda Gates Foundation*** to fight the next pandemic.

But fraudulent transfer laws may permit a creditor or trustee to recover transfers, including transfers to a founder's international asset protection trust. And you might not receive a bankruptcy discharge.

Domestic planning

Asset Protection: Domestic And Foreign Planning Alternatives, SG041 ALI-ABA 1451, 1461-62

> To help clients protect their wealth from potential creditor claims and possible future judgments, sophisticated attorneys engage in "multiple-entity" planning through the use of limited partnerships, corporations, various trust arrangements, foundations, retirement plans, life insurance and the like which, while perhaps originally conceived for the purpose of tax planning or wealth transfer, have the additional benefit of asset protection.

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Asset Protection: Domestic And Foreign Planning Alternatives, SG041 ALI-ABA 1451, 1462

> Opportunities for asset protection planning abound in ***domestic*** legal vehicles such as corporations, limited partnerships, limited liability companies, limited liability partnerships, trusts, retirement plans, life insurance, annuities, homesteads, spousal arrangements, inheritances, and foundations. Permutations and combinations of these entities and variations of the law between jurisdictions offer even more opportunities. For example, passive assets can be segregated from those with liability exposure (*e.g.,* marketable securities can be segregated from an apartment complex); certain entities may be separated into multiple entities in order to achieve superior asset protection (*e.g.,* two limited partnerships can be created to hold two pieces of real estate, each of which has an inherent risk or liability); limited partnerships can be deployed in conjunction with trusts; and corporations or limited partnerships can be formed in hospitable jurisdictions [Bovitz: now up to 20 states].

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Watch the CPEX 2022 program on domestic asset protection trusts

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International asset protection trusts

Richard C. Ausness, ***The Offshore Asset Protection Trust: A Prudent Financial Planning Device or the Last Refuge of a Scoundrel?***, 45 Duq. L. Rev. 147 (2007) (Available at: https://dsc.duq.edu/dlr/vol45/iss2/2):

> In recent years, a large number of Americans have established "asset protection trusts" in foreign countries. An asset protection trust is a self-settled spendthrift trust which is created in order to protect the settlor's property from the claims of creditors. ... I argue that offshore asset protection trusts serve a legitimate purpose and, therefore, American courts should enforce them, at least when certain conditions are met. Specifically, the transfer of assets to the offshore trust must not be fraudulent; the settlor should not retain any beneficial interest in the trust other than a reversion; the settlor should not retain a power of appointment nor act as trustee or trust protector; the settlor should retain a copy of the trust instrument; and the trust instrument should require the trustee to render periodic accountings to the settlor and all trust beneficiaries. If these conditions are satisfied, a domestic court should apply the law of the trust situs and recognize the validity of the offshore trust.

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Asset Protection: Domestic And Foreign Planning Alternatives, SG041 ALI-ABA 1451 , 1474

> There are two primary attractions of offshore trusts.
>
> First, like the Domestic Venue trusts discussed above, it is possible for a settlor to create a spendthrift trust and yet remain a beneficiary.
>
> Second, because it is jurisdictionally severed from the United States, an offshore trust is less likely than a domestic trust to be targeted as a source for satisfying a future judgment or claim. The difficulty in accessing the trust, both physically and legally, might influence a potential future claimant's decision to pursue an action, or, at a minimum, incline the claimant to settle in ways more favorable to the defendant.

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But don't creditors always recover the offshore assets?

Jay Adkisson, ***"Why Do Creditors Win In Most Of The Reported Asset Protection Cases?"*** (Forbes, August 25, 2011)
http://www.forbes.com/sites/jayadkisson/2011/08/25/why-do-creditors-win-in-most-of-the-reported-asset-protection-cases

> A reader asked me why it seems like the creditors win nearly of the reported cases involving asset protection and related issues. One of the main goals of asset protection is to settle the case before it gets to court, so the reported cases will not reflect the cases that might have been asset protection "successes" in the sense that the case was resolved to the mutual satisfaction and dissatisfaction of all parties before it became necessary to involve somebody in a black robe in a decisional sense. One might even argue that an asset protection case that makes it to a decision has already partially failed. ...
>
> The cases that are "good" for debtors usually settle; the cases that are "good" for creditors will probably go to a decision and thus "make law."

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Steve Newburgh, how does a creditor or trustee enforce a judgment overseas?

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Attacking offshore trusts

Asset Protection: Domestic And Foreign Planning Alternatives, SG041 ALI-ABA 1451, 1474

> Typically, a creditor who is attempting to reach the assets of an offshore trust will first obtain a judgment against the debtor in a United States court. The judgment creditor will then attempt to satisfy this judgment with assets in the offshore trust. In order to reach such assets effectively, the judgment creditor may be forced to bring suit against the trustee in either the jurisdiction where the trustee is domiciled or in a jurisdiction where trust assets are located. In situations in which the creditor is alleging that a fraudulent transfer occurred or in certain other situations, the suit may also be brought in the jurisdiction of the settlor's domicile (*e.g.,* in a bankruptcy context).

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Asset Protection: Domestic And Foreign Planning Alternatives, SG041 ALI-ABA 1451, 1474

> As with Domestic Venue trusts, the judgment creditor's arguments generally will fall into one or more of the following categories, which might be pled individually or in the alternative: (i) the asset protection features of the offshore trust offend public policy in the jurisdiction where the post-judgment action is brought and, therefore, the governing law of the trust (i.e., the laws of the offshore jurisdiction) should be ignored in favor of such jurisdiction in which the action is brought; (ii) the settlor's transfer to the offshore trust was a fraudulent transfer and, therefore, should be set aside; or, (iii) the offshore trust is a "sham" trust or is the alter ego of the settlor and, therefore, because the settlor never really parted with dominion and control over the trust assets, the court should disregard the trust structure.
>
> In planning and in implementation, the lawyer should always remember that the initial action will usually be brought in the United States and should be familiar with the three typical creditor legal theories cited above.

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In re Samuel Evans Wyly

In re Wyly, 552 B.R. 338, 366, 368 (Bankr. N.D. Tex. 2016)

> Sam and Charles are brothers who grew up in modest circumstances in northeast Louisiana. Charles was about a year older than Sam and they were close friends and business associates throughout their adult lives. ...
>
> By 1990, Sam and Charles had accumulated enormous wealth.
>
> As the SDNY Court found, and was independently established here, "in early to mid–1991, Sam Wyly asked Robertson to attend a seminar held by lawyer and trust promoter David Tedder ["Tedder"] on the use of foreign trusts as a method of asset protection and tax deferral."

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In re Wyly, 552 B.R. 338, 369 (Bankr. N.D. Tex. 2016)

> Tedder later provided the Wylys with written information about his firm's view of asset protection, including a document entitled "An Overview of Asset Protection Estate and Income Tax Reduction Using Domestic and International Structures."
>
> The goal, as stated in the overview, "is to ensure that a creditor will never be able to touch or get control of your assets, and allow you to maintain complete control of all your assets."

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Property of the "bankruptcy estate"

11 U.S.C. §541(a)(1):

> (a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:
>
> (1) Except as provided in subsections (b) and (c)(2) of this section, ***all legal or equitable interests of the debtor*** in property ***as of the commencement of the case.***

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Robert Furr, as a chapter 7 trustee, how do you find and obtain control over property of the bankruptcy estate in Costa Rica?

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Complexity/secrecy of offshore trusts

In re Wyly, 552 B.R. 338, 370 (Bankr. N.D. Tex. 2016)

> In part because of the complexity of the record keeping required to support the Wyly offshore system, and in part because of their desire for secrecy and to make access to the records of the offshore system more difficult for their creditors, including the IRS, to obtain if there was ever a challenge to the offshore system, Sam and Charles implemented an offshore version of their Dallas family office in the mid–1990s called Irish Trust Company ... an entity domiciled in the Cayman Islands and indirectly owned by two of the Wyly IOM trusts.

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A creditor or trustee can seek to void the choice of law provision in a trust, perhaps permitting application of the forum's law to set aside a self-settled spendthrift trust

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In re Huber, 493 B.R. 798, 808–809 (Bankr. W.D. Wash. 2013)

> In the instant case, it is undisputed that at the time the Trust was created, the settlor was not domiciled in Alaska, the assets were not located in Alaska, and the beneficiaries were not domiciled in Alaska. The only relation to Alaska was that it was the location in which the Trust was to be administered and the location of one of the trustees, AUSA. Conversely, it is undisputed that at the time the Trust was created, the Debtor resided in Washington; all of the property placed into the Trust, except a $10,000 certificate of deposit, was transferred to the Trust from Washington; the creditors of the Debtor were located in Washington; the Trust beneficiaries were Washington residents; and the attorney who prepared the Trust documents and transferred the assets into the Trust was located in Washington. Accordingly, while Alaska had only a minimal relation to the Trust, ... Washington had a substantial relation to the Trust when the Trust was created. Additionally, Washington State has a strong public policy against self-settled asset protection trusts. ... the Debtor's transfers of assets into the Trust were void as transfers made into a self-settled trust.

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Fraudulent transfer law

In re Huber, 493 B.R. 798, 812, 814 (Bankr. W.D. Wash. 2013)

> Considering each of the badges of fraud, the evidence submitted by the Trustee first establishes that at the time the Debtor transferred his assets into the Trust, there was threatened litigation against the Debtor. ... The Trustee also has established that the Debtor transferred all or substantially all of his property into the Trust. ... The Trustee further has established significant indebtedness on the part of the Debtor when he transferred his assets into the Trust. ... the Debtor ... is both the trustor and beneficiary of the trust. ... The Trustee also has established that the Debtor effectively retained the property transferred into the Trust. ... The Trustee has established that the five badges of fraud exist in this case. ... The evidence presented by the Trustee supports an inference of actual fraudulent intent by the Debtor to hinder, delay, or defraud his current or future creditors, in violation of § 548(e)(1)(D).

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Denial of discharge

In re Huber, 493 B.R. 798, 816 (Bankr. W.D. Wash. 2013)

> Section 727(a)(2) precludes discharge when the debtor, with intent to hinder, delay, or defraud a creditor has transferred, removed, destroyed, mutilated, or concealed property of the debtor within one year before the petition date, or property of the estate after the petition date. 11 U.S.C. §727(a)(2)(A)–(B). The Trustee concedes that the Debtor's transfers of his assets into the Trust cannot satisfy § 727(a)(2)(A), as the transfers occurred more than one year before the petition date. Yet the Trustee contends that the Debtor's use of the Trust assets, which belong to the estate, within one year of the date of the filing and the continuing use thereafter satisfies §727(a)(2)(A) and (B).

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Does the debtor really want a bankruptcy discharge?

Or is it enough to avoid jail (contempt, tax issues, perjury, bankruptcy crimes) and retain some of her assets after the litigation is over?

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Oh, yeah, that tax stuff...

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Tax Traps in Using Non-U.S. Structures

Brager Tax Law Group
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About Dennis Brager

- 40+ Years of Tax Dispute Experience with IRS, EDD, BOE/CDTFA, and FTB Problems
- Nationally Recognized Tax Litigation Attorney
- California State Bar
- Certified Tax Specialist
- Former IRS Trial Attorney
- Represented Clients in Hundreds of Offshore Reporting Cases

International Reporting Forms that Trigger the Extended Statute of Limitations

IRS Form	Reporting Obligation	IRC Section
Form 926	Non-recognition transfers to foreign corporations	6038B
Form 3520	Gratuitous transfers to foreign trusts and U.S. owners of foreign trusts	6048(a), (b)
Form 3520-A	Distributions received by U.S. persons from foreign trusts	6048 (c)
Form 5471	U.S. persons who control foreign corporations	6038
Form 5471	U.S. persons who become officers or directors of a foreign corporation and certain 10% or more shareholders	6046
Form 5472	U.S. Corporations 25% or more foreign owned	6038A
Form 8621	Shareholder of a PFIC	1298(f)
Form 8858	Foreign Disregarded Entities	6038, 6038B
Form 8865	U.S. persons with certain 10% or more ownership changes	6046A
Form 8865	U.S. persons who control foreign partnerships	6038
Form 8938	Specified persons required to report specified foreign financial assets	6038D

Form 8938 – Statement of Foreign Assets

- Specified persons must report interests in "specified foreign financial assets" (SFFAs) for tax years after March 18, 2010
- Who must file?
  - "Specified persons" with "specified foreign financial assets" greater than $50,000 at year-end or $75,000 at any point during the year
- When & how to file?
  - Attach Form 8938, *Statement of Specified Foreign Financial Assets*, to tax return by due date (with extension)

Specified Foreign Financial Assets Reportable on Form 8938

- Foreign Financial Accounts, e.g. Bank accounts, securities accounts
- Stock or securities issued by someone that is not a U.S. person
- Any interest in a foreign entity
- Any financial instrument or contract that has an issuer or counterparty that is not a U.S. person
- Examples of other specified foreign financial assets include the following, if they are held for investment and not held in a financial account.
  - Stock issued by a foreign corporation.
  - A capital or profits interest in a foreign partnership.
  - A note, bond, debenture, or other form of indebtedness issued by a foreign person.
  - An interest in a foreign trust or foreign estate.

Form 8938 – Statement of Foreign Assets

- **Penalties (I.R.C. § 6038D)**
  - Generally, $10,000, but may increase up to $60,000 for failure after notice
  - Reasonable cause defense available
  - Able to be reviewed in CDP proceedings, if there has been no prior opportunity to dispute the penalty.

Form 5471

U.S. citizens and residents (including entities) who are officers, directors, or shareholders in controlled foreign corporations may need to file Form 5471, *Information Return of U.S. Persons With Respect to Certain Foreign Corporations*. *See* I.R.C. §§ 6038, 6046


Form 5471
Information Return of U.S. Persons With Respect to Certain Foreign Corporations

- Cat. 1. 10% or more owner of a specified foreign corporation
- Cat. 2. Officer or director if there are certain 10% changes in ownership
- Cat. 3. Shareholders with certain 10% ownership changes
- Cat. 4. Control person in a CFC at any time during the year
- Cat. 5. 10% or more owners with "U.S. shareholders" owning more than 50% of the shares

Form 5471 Penalties

- **Penalties I.R.C. § 6038(b) "Assessable" Penalty**
  - $10,000 per foreign corporation
  - Penalties apply to both a failure to file, or the filing of an incomplete Form 5471
- **During audit, or at any other time, the IRS may issue a written request for the taxpayer to file Form 5471 within 90 days. If not filed, or incomplete then the continuation penalty will apply.**
  - $10,000 per month to a maximum of $50,000
  - Total: $60,000
  - CDP available **if there has been no prior opportunity to dispute the penalty**

Form 5472: Foreign Corporations

- Some corporations may need to file Form 5472, Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business
- Foreign corporations engaged in a trade or business in the United States; or
- Domestic corporations which have at least one direct or indirect 25% foreign shareholder
  That engages in a reportable transaction

Form 5472 Penalties

Penalties I.R.C. § 6038A: $25,000 per foreign corporation

During audit, or at any other time the IRS may issue a written request for the taxpayer to file Form 5472 within 90 days. If not filed, then the continuation penalty will apply

- $25,000 per month
- There is no apparent maximum to the penalty. Cf. IRM 20.1.9.5.4(2) and IRM 20.1.9.15.4 (03-21-2013) apparent maximum
- Penalties apply to both a failure to file, or the filing of an incomplete Form 5472
- Prior to 2018 the penalty was $10,000 with a $10,000 per month continuation penalty
- CDP available *if there has been no prior opportunity to dispute the penalty*

Form 3520: For Trusts & Gifts

Grantors or beneficiaries with reportable transactions with foreign trusts or estates must file Form 3520, *Annual Return to Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts. See* I.R.C. §§ 679(c), 6048(a),(b)

- Many reportable transactions; e.g., formation of a foreign trust; transfer of property to a foreign trust; loans to a foreign trust; the receipt of any distribution by a U.S. beneficiary
- aggregate gifts or bequests from an NRA or foreign estate greater than $100,000 during a calendar year
- Gifts from foreign partnerships or foreign corporations of more than $15,601

When and where to file?

- Due April 15th ; If the U.S. person gets an *extension*, then the due date is October 15th
  It is filed with Ogden, UT Service Center. It is **not** attached to the tax return

Penalties I.R.C. § 6677

- Greater of $10,000 or 35% of the gross value of the distribution received from, or transferred to, a foreign trust
- 5% per month of the amount, of foreign gifts or inheritances, up to 25%
- CDP available **if there has been no prior opportunity to dispute the penalty**

Form 3520-A: For Trusts with a U.S. Owner

A foreign trust with a U.S. owner pursuant to the grantor trust rules must file Form 3520-A, *Annual Information of Foreign Trusts With a U.S. Owner*. See I.R.C. §6048(b)

- Note: Trust's obligation to file, but penalty falls on U.S. person

When and where to file?

- Generally by March 15th. A separate request on Form 7004 is required to obtain an extension
- File with the Ogden, UT Service Center

Penalties. I.R.C. § 6677

- Greater of $10,000 or 5% of the gross value of the portion of the trust assets treated as owned by the U.S. person
- Continuation penalty of $10,000 per month may be imposed up to $50,000
- The penalty is imposed on the U.S. owner, not the foreign trust. I.R.C. Section 6677(b)
- CDP available

Form 8858: Foreign Disregarded Entities (DRE)

Certain U.S. persons who own a foreign disregarded entity must file Form 8858, *Information Return of U.S. Persons With Respect to Foreign Disregarded Entities*. I.R.C. §6038B.

- A foreign DRE is an entity that is not created or organized in the U.S. and is disregarded as an entity separate from its owner for U.S. tax purposes. See Treas. Reg. Section 301.7701-2 and 3

When to file?

- Attach to timely filed return of the owner of the foreign DRE

Penalties I.R.C. § 6038(b)

- $10,000 per foreign disregarded entity plus a $10,000 continuation penalty per month, not to exceed $50,000
- Also, subject to a 10% reduction of the available foreign tax credit. I.R.C. Section 6038(c)
- CDP available *if there has been no prior opportunity to dispute the penalty*

FBAR (Report of Foreign Bank and Financial Accounts)

Title 31 U.S.C. § 5314

Requires a U.S. person having a financial interest in or signature or other authority over, a reportable account in a foreign country to report the account if aggregate value of the accounts > $10,000 any time during calendar year

- **U.S. person**
  - Citizen of the U.S., resident alien, or a corporation, trust, or LLC formed under U.S. laws
- **Types of Reportable Accounts**:
  - Banking accounts
  - Securities accounts
  - Other financial accounts:
    - Insurance or annuity policy with cash value;
    - Futures or options transactions in any commodity; and,
    - Mutual funds

FBAR (Report of Foreign Bank and Financial Accounts (cont.))

- **Financial Interest**
  - U.S. person has legal title whether maintained for his/her benefit or the benefit of others
  - Persons acting as an agent or nominee on behalf of the U.S. person
  - A corporation in which U.S. person owns more than 50% of the voting power or total value of the shares;
  - A partnership in which the U.S. person owns more than 50%;
  - A trust, if the U.S. person is the trust grantor and has an ownership interest in the trust for U.S. federal tax purposes
  - A trust in which the U.S. person either has a present beneficial interest in more than 50% of the assets or from which such person receives more than 50% of current income
- **Signature or Other Authority**
  - Authority of an individual to control the disposition of money, funds or other assets held in a financial account by direct communication (whether in writing or otherwise) to the person with whom the financial account is maintained

FBAR (Report of Foreign Bank and Financial Accounts) (cont.)

Form 114
- Filed electronically with FinCEN

Filing Date
- April 15 of year following the calendar year to be reported.
- Automatic extension to October 15 each year

Record Retention
- Required. 5 years

Penalties
- Non willful: $10,000 [inflation adjusted to 14,486 as of Jan. 25, 2022] per violation (per form/account). See 31 USC 5321(a)(5)(B)(i)
  United States v. Boyd, 991 F.3d 1077 (9th Cir. 2021) and *United States v. Bittner*, 19 F.4th 734 (5th Cir. 2021)
- Reasonable cause exception applies. See 31 USC 5321(a)(5)(B)(ii)
- Willful: the greater of $100,000 [inflation adjusted to $144,886 as of Jan. 25, 2022] or 50% of the balance in the account at the time of the violation. See 31 USC §5321(a)(5)(C)(i)
- No reasonable cause exception. 31 USC § 5321(a)(5)(C)(ii)
- Mitigation guidelines apply to FBAR penalties after May 12, 2015
- It is essential to establish the account balance on the violation date (June 30th for years 2015 and prior or April 15th for years 2016 and later)
- Criminal: Up to 10 years in prison and $500,000. See 31 USC §5322

What is Willful Blindness, and Why Do You Care?

Under the theory of "willful blindness," willfulness may be attributed to a person who has made a conscious effort to avoid learning about the FBAR reporting requirements

"**Willful blindness" requires proof that:**

- a person subjectively believed that there was a high probability that a fact exists; and,
- he took deliberate actions to avoid learning of that fact. *Global-Tech Appliances v. SEB, SA,* 131 S. Ct. 2060, 2070-71 (2011)
- "Willful blindness" is more than recklessness or negligence. A willfully blind person is one who takes deliberate actions to avoid confirming a high probability of wrongdoing and who can almost be said to have actually known the critical facts. A defendant must subjectively believe that there is a high probability that a fact exists and the defendant must take deliberate actions to avoid learning of that fact." Global Tech is at 2070

Cf. *McBride*, (Willful blindness found based on the failure to review Schedule B of the tax return) but see, IRM 4.26.16.6.5.1(5) (11-06-2015). ("The mere fact that a person checked the wrong box, or no box, on a Schedule B is not sufficient, *by itself*, to establish that the FBAR violation was attributable to willful blindness")

Willful Blindness - *Williams*

United States v. Williams, 489 Fed. Appx. 655, 2012 U.S. App. LEX IS 15017 (4111 Cir. July 20, 20 12)(unpublished), *reversing* 2010 U.S. Dist. LEX IS 90794, No. I :09-cv-437 (E. D. Va. Sept. I, 2010)

- Non-precedential
- Split panel

Criminal Conviction -- Mr. J. Bryan Williams pled guilty to a two-count superseding criminal information, charging him with conspiracy to defraud the IRS, in violation of 18 U .S.C. § 3 71 , and criminal tax evasion, in violation of 26 U.S.C. § 7201.

- Unreported Income of $800,000 on $7,000,000 in deposits
- Lied to the accountant on the organizer
- Checked the "No" box

"I also knew that I had the obligation to report to the IRS and/or the Department of the Treasury the existence of the Swiss accounts, but for the calendar year tax returns 1993 through 2000, I chose not to in order to assist in hiding my true income from the IRS and evade taxes thereon, until I filed my 2001 tax return."

Recklessness = Willfulness

- Recklessness is a lower standard than willful blindness
- **Recklessness is an objective standard** that looks to whether conduct entails "an unjustifiably high risk of harm that is either known or so obvious that it should be known." *Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47, 68 (2007)
- ***Norman v. United States***, 138 Fed. Cl. 189, 194-95 (2018)
  "Although one of the few consistent pieces of Ms. Norman's testimony was that she did not read her tax return. Simply not reading the return does not shield Ms. Norman from the implications of its contents
- ***Bedrosian v. United States***, 912 F.3d 144, 153 (2018). (Willful intent includes recklessness. A person "recklessly" fails to comply with an IRS filing requirement when he or she "(1) clearly ought to have known that (2) there was a grave risk that [the filing requirement was not being met] and if (3) he [or she] was in a position to find out for certain very easily
- ***United States v.* Bohanec,** 263 F. Supp. 3d 881(C.D. Cal. 2016). Defendant reckless. ("Part III of Schedule B of Defendants' 1998 tax return put them on notice that they needed to file an FBAR.")
- ***Kimble v. United States***. 141 Fed. Cl. 373 (2018), aff'd, 991 F.3d 1238 (Fed. Cir. 2021), cert. denied, No. 20-1697 (U.S. Oct. 04, 2021). Ms. Kimble failed to disclose her account to her accountant; failed to inquire about any need to disclose that information to her accountant; signed, under penalty of perjury, that her tax returns were reviewed and correct; and that she indicated on those tax returns she did not have a foreign bank account

IRS Penalty Avoidance Programs that Mitigate Penalties: Streamlined Filing Compliance Procedures: The IRS' Foreign & Domestic Submission Procedures

PROGRAMS

- First Time Abate program (Forms 5471 and 5472)
- CI Voluntary Disclosure Program (VDP)
- Streamlined Domestic Offshore Procedures (SDOP)
- Streamlined Foreign Offshore Procedures (SFOP)
- Delinquent International Information Return Submission Procedures (DIIRSP)
- Delinquent FBAR Submission Procedures
- Automatic penalty abatement (Forms 5471, 5472, 3520, 3520A) for systemically assessed penalties if returns filed prior to September 30, 2022. IRS Notice 2022-36

QUESTIONS?

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Faculty

J. Scott Bovitz is a senior partner with Bovitz & Spitzer in Los Angeles, where he practices both consumer and business bankruptcy law and represents debtors and creditors. He is Board Certified in Business Bankruptcy Law by the American Board of Certification, which he chaired, and he is a Certified Specialist in Bankruptcy Law for the State Bar of California Board of Legal Specialization, which he also chaired. Mr. Bovitz is rated AV-Preeminent by Martindale-Hubbell and has been selected as *Southern California Super Lawyer* in bankruptcy and creditor/debtor rights. In addition, he was a lawyer representative for the Ninth Circuit Judicial Conference from 2018-22, was a coordinating editor of the *ABI Journal* from 2014-21, and is a former member of the California Committee of Bar Examiners, a former adjunct professor of law at Loyola Law School in Los Angeles, a former executive editor and author of *Personal and Small Business Bankruptcy Practice in California*, a former president of the Los Angeles Bankruptcy Forum and a former education and conference co-chair of the California Bankruptcy Forum. In addition, he sits on the Information Technology Committee for the Central District of California Bankruptcy Court and is the founder of bankruptcydog.com, a calendar site for bankruptcy professionals. Mr. Bovitz received his J.D. in 1980 from Loyola Law School in Los Angeles.

Dennis N. Brager is the founder of Brager Tax Law Group in Los Angeles and is a nationally recognized California State Bar Certified Tax Specialist and former senior tax attorney for the IRS's Office of Chief Counsel. In addition to representing the IRS in court, he advised the IRS on complex civil and criminal tax issues. Mr. Brager is frequently quoted in national publications and has been consulted as a tax expert by *Business Week*, *Accounting Today*, the *Daily Journal*, the *National Law Journal*, *The Daily Beast*, *USA Today*, *Palm Beach Daily News*, *Money Laundering* and *Tax Analyst*. A number of his articles have appeared in industry publications and journals, and he has appeared on ABC's "Good Morning America," "Fox Business News," "TV One Access" and "KFWB Money 101." His articles include "New 'Streamlined' FBAR Filing," "Offshore Voluntary Disclosure — The Next Generation," "Partial Offshore Tax Amnesty — Voluntary Disclosure 2.0," Anatomy of an OPR Case (Definitely Not R.I.P.)," "FBAR and Voluntary Disclosure," "The Tax Gap and Voluntary Disclosure," "Circular 230: An Overview," "Recent Developments in Tax Procedure," "Damages, Rescission and Debt Cancellation as Client Income," "Prevailing Party Recovering Attorneys Fees From the IRS," "The Taxpayer Bill of Rights — A Small Step Toward Reining in the IRS," "Challenging the IRS Requires a Cohesive Strategy," "The Innocent Spouse Defense," "Tax Brakes: The Taxpayer Bill of Rights 2" and "Expert Advice: Avoiding Payroll Taxes." Mr. Brager has been named a *Super Lawyer* in the field of Tax Litigation every year since 2006, and he holds an AV-Preeminent rating from Martindale Hubbell, as well as a "superb" rating from Avvo. He is certified by the California State Bar as a Tax Specialist — one of only 358 in the entire state —and his presentations have been well received at national conferences, including the American Bar Association, the Consumer Rights Litigation Conference and the National Association of Enrolled Agents. He regularly speaks at the California Continuing Education of the Bar, the California Society of CPAs, the UCLA Tax Controversy Institute, the California State Bar Association and the Warner Center Estate and Tax Planning Council. He also taught at the Golden Gate University's Masters in Taxation Program and has been a guest speaker at the University of Southern California. Mr. Brager's practice is limited to clients who have disputes with the IRS, the Franchise Tax Board, the California Department of Tax and Fee Administration, and the Employment Development Department — at both the trial and

administrative levels. He represents clients on a variety of issues, including criminal and civil tax fraud, tax audit and appeals, payroll and sales tax problems, tax-preparer penalties, innocent-spouse defenses, offers in compromise, installment payment agreements, Office of Professional Responsibility (OPR) defenses and more. He also is available as an expert witness and a speaker on all of these topics. Mr. Brager received his B.B.A. *magna cum laude* in 1975 in accounting/finance from Pace University and his J.D. from New York University in 1978.

Robert C. Furr is a partner with Furr & Cohen, P.A. in Boca Raton, Fla., and serves as a panel trustee for the U.S. Department of Justice in the Southern District of Florida. He is regularly appointed as a chapter 11 trustee and has been designated as the chapter 12 trustee in the Southern District. Mr. Furr has represented numerous businesses in chapter 7 liquidations and in chapter 11 reorganizations, as well as individuals in complex chapter 7 and chapter 11 proceedings. He lectures frequently on issues of bankruptcy, creditors' rights and remedies before national organizations. Mr. Furr served as editor of *NABTalk* from 2000-05 and sat on NABT's board of directors from 2000-11, serving as president during the 2008-09 term. He is currently president of the American Board of Certification. Mr. Furr is a contributor to the *ABI Journal* and is admitted to practice law in Georgia and Florida and in all federal courts in Florida and the Eleventh Circuit Court of Appeals. In 1983, Mr. Furr became a Board Certified Civil Trial Lawyer by the Florida Bar, and in 1994 he received an AV rating by Martindale-Hubbell. He is listed in *The Best Lawyers in America* and in *Florida Super Lawyers* and is a Fellow in the American College of Bankruptcy. Mr. Furr received his J.D. from Emory University in 1975.

Steven S. Newburgh is an attorney with Lubell Rosen, LLC in Fort Lauderdale, Fla., where he concentrates on bankruptcy law, primarily on behalf of bankruptcy trustees and creditors, corporate restructuring and reorganization, bankruptcy adversary proceedings, creditors' rights, complex commercial litigation and entertainment law. His legal experience traces its roots to a 1982 clerkship with then-private practitioner Raymond B. Ray, now a U.S. Bankruptcy Judge for the Southern District of Florida. Mr. Newburgh was recently re-appointed as chair of the Bankruptcy Bar Association, Southern District of Florida, West Palm Beach Division's *Pro Bono* Committee. He is experienced in both non-jury and jury trials. Mr. Newburgh has lectured in the areas of bankruptcy and entertainment law and previously represented the entire cast of the hit television series, "Miami Ink." He has also worked on international music publishing and subpublishing transactions and recording deals on behalf of such jazz and rock legends as Ron Carter, Stanley Jordan, Jack DeJohnette and Billy Ta. Mr. Newburgh has devoted a significant amount of time to *pro bono* representations and civic involvement. He has received awards for his dedication and service to the court from the U.S. District Court for the Southern District of Florida, was nominated as *Pro Bono* Attorney of The Year in Florida by the Fifteenth Judicial Circuit Guardian *Ad Litem* program and received the Program's Circuit *Pro Bono* award. He also received an Outstanding Service award from B'nai B'rith Justice Lodge in Florida. Mr. Newburgh has served on the City of West Palm Beach Housing Commission as a commissioner and was elected as vice chairman and chairman of the Commission. He has also served on the City's Library Advisory Board, was formerly the chairman of the West Palm Beach Parks and Recreation Advisory Board and, most recently, was a member of the City of West Palm Beach Water Advisory Task Force. In addition, he co-authored Chapter 16 of the Florida Bar's *Florida Condominium and Community Association Law Treatise, Third Edition*, titled, "Condominium and Homeowners' Association Liens and Bankruptcy." Mr. Newburgh received his B.S. in political science from the University of Wisconsin-Madison in 1978 and his J.D. from Nove Southeastern University Shepard Broad College of Law in 1982.