

Proving Willfulness in an FBAR Case

By Steven Toscher and Lacey Strachan

Steven Toscher and Lacey Strachan examine the willfulness standard which will likely be applied in FBAR cases and why the mere signing of a Form 1040 with a Schedule B is not enough.

As the IRS and the Department of Justice (DOJ) launch into examinations, investigations and prosecutions of individuals who had foreign bank accounts but failed to file the required Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts (the FBAR), a key determination in proving the case—be it a criminal violation or a willful civil violation—is whether the government can establish the failure to file the FBAR form was “willful.” Both the IRS and the DOJ often rely on the fact that the taxpayer signed a Form 1040 with a Schedule B which asks the question of whether the taxpayer had a financial interest in a foreign bank account. The government reasons that the taxpayer signed the return under penalty of perjury, the jurat on the face of the return says the taxpayer read the return and all the schedules, and therefore the taxpayer must have read it and is put on notice regarding the duty to file the FBAR.

While this is an argument, *it is not enough* under the law to prove willfulness. The government must prove more. This is especially important given the steep penalties that may be imposed for a civil violation and the risk of a criminal prosecution for a willful failure to file an FBAR. Under 31 USC §5322(a), a person who is convicted of willfully failing to file an FBAR potentially faces up to five years in prison.¹ Given the very few criminal prosecutions for willful failure to file the FBAR and the relatively few times the willful FBAR penalty has been asserted under the law, there are few reported decisions or guidance as to what

the government must establish. This article sets forth the willfulness standard which will likely be applied in FBAR cases and why the mere signing of a Form 1040 with a Schedule B is not enough.

Burden of Proof

In all cases, the IRS has the burden of proving willfulness.² To be convicted of a felony for failing to file an FBAR under 31 USC §5322(a), the government must prove willfulness beyond a reasonable doubt—a higher standard of proof than is needed to impose the civil penalty.

In the civil context, the standard of proof is less settled. In a Chief Counsel Advice (CCA) memorandum released January 20, 2006, analyzing the issue of willfulness in the FBAR context, the IRS compared the burden of proof for the civil FBAR penalty to the burden of proof for the civil fraud penalty under Code Sec. 6663, explaining that it expects the standard of proof will be the same—clear and convincing evidence, not merely a preponderance of the evidence.³ However, in the more recently decided civil FBAR case *J.B. Williams*, the court applied the preponderance of the evidence standard.⁴ However, we note that the standard of proof applied in that case would have been immaterial to the holding, because the court held that the government in that case did not meet even the low preponderance of the evidence standard.⁵

Willfulness Defined

Although the FBAR statute is not part of the Internal Revenue Code, guidance may be drawn from courts’ interpretations of the willfulness standard in tax

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cases. Willfulness has been defined by the courts as a “voluntary, intentional violation of a known legal duty.”⁶ The Ninth Circuit has explained that “[w]illfulness, as construed by our prior decisions in criminal tax cases, requires the Government to prove that the law imposed a duty on the defendant, that the defendant knew of this duty, and that he voluntarily and intentionally violated that duty.”⁷ In a criminal FBAR case, *D.A. Sturman*, the Sixth Circuit applied the tax law definition of willfulness in determining whether a defendant violated the FBAR reporting requirements, holding that the “test for statutory willfulness is voluntary, intentional violation of a known legal duty.”⁸

The IRS’s Interpretation of Willfulness

In the Internal Revenue Manual, the IRS suggests that “willful” carries the same meaning in the FBAR context as in the criminal tax context. It states that, for application of the FBAR willfulness penalty, “the test for willfulness is whether there was a voluntary, intentional violation of a known legal duty.”⁹ It explains that willfulness is shown by the person’s knowledge of the reporting requirements and the person’s conscious choice not to comply with the requirements.¹⁰

In the CCA released January 20, 2006, the Chief Counsel’s Office offers guidance relating to the definition of willfulness in the civil FBAR context. Although the CCA relates specifically to cases in earlier IRS voluntary disclosure and amnesty programs, the Chief Counsel’s views should be applicable to all FBAR reporting situations. Consistent with the Internal Revenue Manual, the IRS concludes that “willful” in the civil penalty statute has the same meaning and interpretation as under the criminal penalty statute.¹¹ The CCA reasons that because the word “willful” is used in both sections, statutory construction rules suggest that the same word used in related sections should be consistently construed.¹²

After analyzing the Supreme Court structuring case *W. Ratzlaf*,¹³ the CCA concludes that the willfulness standard under the Bank Secrecy Act requires the government to prove that the defendant had acted with knowledge that his conduct was unlawful—a “voluntary intentional, violation of a known legal duty.”¹⁴ In the FBAR context, the IRS interprets this definition to mean that it would only need to establish that the taxpayer had knowledge of the duty to file the FBAR, because knowledge of the duty to file an FBAR would necessarily entail knowledge that it is illegal

not to file the FBAR.¹⁵ The corollary of this principle is that there is no willfulness if the account holder has no knowledge of the duty to file the FBAR.

Judicial Interpretations of Willfulness

In the CCA, the IRS relied on the Supreme Court case *W. Ratzlaf*, which is a key case interpreting the term “willful” with respect to the Bank Secrecy Act’s criminal structuring statute. This decision is especially pertinent in the FBAR context because it interprets the term willful as used in 31 USC §5322—the same section that makes a willful failure to file an FBAR a felony. The Supreme Court explained that the term willful “consistently has been read by the Courts of Appeals to require both knowledge of the reporting requirement and a specific intent to commit the crime.”¹⁶ It cites a collection of cases that have interpreted 31 USC §5322(a)’s “willfulness” requirement, with definitions including: a “purpose to disobey the law,” a “voluntary, intentional, and bad purpose to disobey the law,” and “knowledge of the reporting requirement and [a] specific intent to commit the crime.”¹⁷ *Ratzlaf* held that the government must prove that the defendant acted with knowledge that his conduct was unlawful.¹⁸

D.A. Sturman is a Sixth Circuit case, decided in 1991, that upheld a defendant’s conviction on a count of willfully failing to maintain records and file reports as required under 31 USC §5314.¹⁹ On appeal, the defendant argued that the prosecution failed to show that he was aware of the Form TD F 90-22.1 filing requirements.²⁰ The court defined the willfulness standard as a “voluntary, intentional violation of a known legal duty,” citing the tax case *J.L. Cheek*,²¹ 498 U.S. 192 (1991), and explained that “[w]illfulness may be proven through inference from conduct meant to conceal or mislead sources of income or other financial information.”²²

In *Sturman*, the defendant admitted knowledge of and failure to answer the question on Schedule B of his Form 1040 concerning signature authority at foreign banks.²³ The Sixth Circuit upheld the conviction, holding that “[e]vidence of acts to conceal income and financial information, combined with the defendant’s failure to pursue knowledge of further reporting requirements as suggested on Schedule B, provide a sufficient basis to establish willfulness on the part of the defendant.”²⁴

In the civil context, a judicial interpretation of the willfulness standard did not come until 2010, in *J.B. Williams*.²⁵ Following a bench trial, the Eastern

District of Virginia held that the government failed to meet its burden of establishing that Williams willfully failed to disclose assets in a foreign account in violation of 31 USC §5314.²⁶ In this non-published case, the government sought to enforce its assessments of two FBAR penalties against the Defendant Williams for willfully failing to report his interest in two Swiss bank accounts for tax year 2000. The court found that willfulness was lacking—it held that the government did not “adequately account for the difference between failing and *willfully* failing to disclose an interest in a foreign bank account.”²⁷

The court distinguished tax evasion from a violation of 31 USC §5314, explaining that the fact that “Williams intentionally failed to report income in an effort to evade income taxes is a separate matter from whether Williams specifically failed to comply with disclosure requirements contained in § 5314.”²⁸ The government sought to prove willfulness by arguing that Williams’ signature on his Form 1040 is *prima facie* evidence that he knew the contents of his tax return—which included a Schedule B with the question regarding foreign accounts marked “No.”²⁹ The court, in citing to *H.V. Mohny*,³⁰ (a “taxpayer’s signature on a return does not in itself prove his knowledge of the contents, but knowledge may be inferred from the signature along with the surrounding circumstances ...”), concluded that “Williams’ testimony that he only focused on the numerical calculations on the Form 1040 and otherwise relied on his accountants to fill out the remainder of the Form [was] credible, and should be given more weight than the mere fact that Williams checked the ‘No’ box.”³¹ The court thus concluded that Williams’ failure to disclose already-frozen assets in a foreign account was not an act undertaken intentionally or in deliberate disregard for the law, but instead constituted an understandable omission given the context in which it occurred.

Recklessness

The court in *Williams* did not articulate a standard for “willfulness” in the FBAR context, instead quoting the Supreme Court in *Safeco Insurance Co. of America v. Burr*, which noted that “‘willfully’ is a word of many meanings whose construction is often dependent on the context in which it appears” and that “[w]here willfulness is a statutory condition of civil liability, it is generally taken to cover not only knowing violations of a standard, but reckless ones as well.”³² *Safeco Insurance Co.* interpreted willfulness in the context of the Fair Credit Reporting Act. The court in *Williams*

went on to quote the Fourth Circuit, which explained, “At some point ... a repeated failure to comply with *known regulations* can move a [defendant’s] conduct from inadvertent neglect into reckless or deliberate disregard (and thus willfulness).”³³

Although the government may rely on *Safeco Insurance Co.* to argue that the willful standard can be met by “recklessness,” this would be inconsistent with long-established precedent defining willfulness in tax and Bank Secrecy Act cases,³⁴ and with the IRS’ own position as expressed in the CCA and the Internal Revenue Manual. The CCA concluded, based on rules of statutory construction, that “willful” has the same meaning in the civil context as it has in the criminal context—a voluntary intentional violation of a known legal duty.

Willful Blindness

The Internal Revenue Manual suggests that willful blindness may be enough to meet the “willful” standard for FBAR violations. The Internal Revenue Manual explains that “willfulness may be attributed to a person who has made a conscious effort to avoid learning about the FBAR reporting and recordkeeping requirements.”³⁵ However, there has been no FBAR case yet finding willfulness on the basis of willful blindness. In other criminal tax cases, courts have allowed a “willful blindness” instruction to be given to the jury in limited circumstances. The willful blindness charge originates from a Ninth Circuit decision, *C.D. Jewell*.³⁶ In a controlled substance case, the Ninth Circuit held that “deliberate ignorance and positive knowledge are equally culpable.”³⁷ In *R. Stadtmayer*, the court concluded that the general rule that willful blindness may satisfy a knowledge requirement applies in criminal tax prosecutions.³⁸ To constitute willful blindness, though, the taxpayer must “*intentionally* avoid” or “*deliberately* evade” learning of his tax obligations—it is a state of mind of “much greater culpability than simple negligence or recklessness, and more akin to knowledge.”³⁹

Lack of Willfulness as a Matter of Law

Where the law is uncertain, the willfulness element of a criminal offense is not met “as a matter of law.”⁴⁰ Given the uncertainty that has plagued the FBAR area and the number of recent developments and clarifications in the law, it is possible that in certain situations a defendant’s failure to file an FBAR for previous years could be considered non-willful as a matter of law.

Under the due process clause of the Fifth Amendment, a defendant cannot be charged with a crime unless he was “given fair notice as to what constitutes illegal conduct so that he may conform his conduct to the requirements of the law.”⁴¹ When the law is “highly debatable” or “unsettled by any clearly relevant precedent,” then a defendant lacks the requisite intent to violate it.⁴² A defendant does not have fair notice under the due process clause where the issue is “novel and unsettled by any clearly relevant precedent.”⁴³ In these situations, the defendant’s actual intent becomes irrelevant.⁴⁴

On February 24, 2011, the Financial Crimes Enforcement Network (FinCEN) issued new regulations clarifying a number of issues relating to when an FBAR is required to be filed.⁴⁵ This guidance and clarification was not available for FBAR forms required for years 2009 and earlier. As a result, in more complex or uncertain cases relating to earlier years, a judge might find the FBAR law to have been at that time “highly debatable” or “unsettled by any clearly relevant precedent,” making the defendant non-willful as a matter of law.

Signing a Return Is Not Enough

Question 7(a) of Part III on the Form 1040 Schedule B asked: “At any time during [the tax year], did you have an interest in or a signature or other authority over a financial account in a foreign country, such as a bank account, securities account, or other financial account?”⁴⁶ The question then directs the taxpayer to “[s]ee instructions on back for exceptions and filing requirements for Form TD F 90-22.1.”

The fact is that most taxpayers do not read their return carefully, especially language on a schedule that does not relate to any numbers on their return. Many taxpayers use a tax preparer or a tax program to prepare their returns and simply sign their returns without reading through the return in detail. Complicating matters further is tax software that has “No” as the default setting for Question 7(a) on Schedule B.

The IRS has asserted that a *prima facie* case of willfulness can be established by the fact that a taxpayer signed a return containing a Schedule B.⁴⁷ The IRS relies on cases that state that a taxpayer’s signature on a return is “prima facie evidence that the signer knows the contents of the return.”⁴⁸ The IRS argues that because the taxpayer is deemed to know the contents of his returns, he therefore knew the return was false and was informed about

the FBAR by Schedule B, even if the taxpayer did not in fact read his return.⁴⁹

Schedule B also provides the basis for the IRS to be able to make a willful blindness argument in certain cases. The Internal Revenue Manual offers as an example of willful blindness the situation in which a person admits knowledge of and fails to answer the question on Schedule B concerning signature authority over accounts at foreign banks—as was the case in *D.A. Sturman*.⁵⁰ Because the question refers the taxpayer to the instructions for Schedule B that provide further guidance on FBAR filing obligations, the IRS maintains that it is reasonable to assume that a person who has a foreign bank account would read the information specified by the government in the tax forms, making the failure to do so evidence of willful blindness. The IRM clarifies, though, that willful blindness cannot be established by Schedule B alone—the failure to learn of the filing requirements may constitute willful blindness only if coupled with other factors. The IRM states that “[t]he 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.”⁵¹

The other angle the IRS may take is to argue that willfulness can be inferred by a taxpayer marking “No” on Schedule B when they have a foreign account. The court in *Sturman* held that “[w]illfulness may be proven through inference from conduct meant to conceal or mislead sources of income or other financial information.”⁵² Although not an FBAR case, the Tax Court in *P.W. Browning* found that a taxpayer concealed the existence of a foreign account in part by answering “No” to Question 7(a) on Schedule B of his Form 1040. In *Browning*, the IRS had imposed a fraud penalty in an employee leasing arrangement. The IRS found that the taxpayer was in constructive receipt of funds placed in a “deferred compensation” account, in part because he had unrestricted access to the funds in the account through a credit card issued by a Bahamas bank and funded by a checking account opened at that same bank. Despite his beneficial interest in this account, the taxpayer marked “No” on Schedule B of his Form 1040. The Tax Court found that by marking “No,” the taxpayer was concealing the account and held that concealment to be an indicia of fraud supporting the imposition of the civil fraud penalty.⁵³

However, the fact that a taxpayer signed a return with an erroneous “Schedule B” in and of itself should not be sufficient to prove willfulness. To establish

willfulness, the government must prove more—the willfulness standard will not be met unless the surrounding facts and circumstances also support a finding that the failure to file an FBAR was willful.

Other Surrounding Facts and Circumstances

In *Williams*, no willfulness was found because, even though the “No” box was checked on the taxpayer’s Schedule B, the surrounding facts and circumstances did not support that his failure to file a Form TD F 90-22.1 was knowing and intentional.⁵⁴ In *Sturman*, willfulness was established by the defendant’s knowledge of the question on Schedule B *together with* acts to conceal his assets from the federal government.⁵⁵ The Internal Revenue Manual states: “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.”⁵⁶ These decisions are consistent with the established law that signing a return is not enough to prove knowledge of its contents.

The court in *W.M. Bass* held that the district court erred in giving the following instruction to the jury:

Whenever the fact appears beyond a reasonable doubt from the evidence in the case that the defendant signed his tax return, you may draw the inference and find that the defendant had knowledge of the contents of such return.⁵⁷

The Seventh Circuit reversed the judgment of conviction and remanded for a new trial, holding that the jury instruction was not merely a rephrasing of the statement that appears at the bottom of all tax returns (“I declare under penalties of perjury that I have examined this return (including accompanying schedules and statements) and to the best of my knowledge and belief it is true, correct and complete.”) and was not proper under the law.⁵⁸ The Seventh Circuit acknowledged that although the signing of a blank return “may be one element necessary to convict a taxpayer of perjury,” it “cannot be said that the effect of such statement is to attribute knowledge of the contents of the return to the taxpayer on the basis of his signature alone.”⁵⁹

The Seventh Circuit explained:

In *Lurding v. United States*, 179 F.2d 419, 421 (6th Cir. 1950), the court said that the taxpayer’s signature has the effect of making the return his

own, but knowledge of the contents must also be proved aside from the willful intent to evade taxes. We do not hold that a taxpayer can sign a false return and escape liability by disclaiming actual knowledge of the contents. Rather, we conclude that it is improper to charge a taxpayer with conclusive knowledge of the contents on the basis of the signature alone. Knowledge may be inferred from the facts and circumstances of the case and certainly the signature at the bottom of the tax return is *prima facie* evidence that the signor knows the contents thereof. The court’s instruction created a conclusive presumption and it was in error.⁶⁰

In *J.L. Lurding*, the defendant argued that his “understatement of his income was not made knowingly or willfully, because he depended on an outside accountant to prepare his returns and believed them to be accurate.”⁶¹ The Sixth Circuit found error with the court’s instruction to the jury, which stated: “It is immaterial that the return may have been made out by another person or that some other person may have assisted in the making of the return.”⁶² The court held:

It is true that the signing of the return by a taxpayer makes it his return, and that if it is false and the taxpayer knows it to be false, he violates the law if he files it with the Collector willfully with an intent to evade the payment of his tax, but where the crux of the offense is the willfulness of the understatement it is not an immaterial circumstance that the taxpayer did not make out the return, and it becomes immaterial only when the government has established, by direct proof or by circumstances, that the taxpayer knew or perhaps should have known that the return was false.⁶³

The court reversed the conviction and remanded for a new trial, noting that the court’s instruction that the best evidence of what a person intended to do by an act is the act itself was also in error. The court explained that “[t]here is no presumption that may be drawn from the act itself—both knowledge and willfulness must be established by independent proof, direct or circumstantial.”⁶⁴

In *H.V. Mohney*, the court explained that “[w]illfulness under section 7206 ‘requires proof of specific intent to do something that the law forbids; more than a showing of careless disregard for the truth is required.’”⁶⁵ The court held that:

A taxpayer's signature on a return does not in itself prove his knowledge of the contents, but knowledge may be inferred from the signature along with the surrounding facts and circumstances, and the signature is prima facie evidence that the signer knows the contents of the return.⁶⁶

Examples of surrounding facts and circumstances in the context of Code Sec. 7206 include "the defendant's knowledge of the business' revenues, his active role in the operations, his hiring of the accounting firm, and his payment of the taxes."⁶⁷

The holding in *Mohney* was followed in the case *J. Bilbrey*, which stated that the willfulness element of Code Sec. 7206(1) requires the government to prove "specific intent to do something that the law forbids; more than a careless disregard for the truth is required."⁶⁸ If proven by circumstantial evidence, the evidence should indicate that the "defendant specifically intended to violate the tax statutes."⁶⁹ The court explained:

For example, the mere fact that a taxpayer has signed a tax return "does not in itself prove his knowledge of the contents[; however, this] knowledge may be inferred from the signature along with the surrounding facts and circumstances, and the signature is prima facie evidence that the signer knows the contents of the return."⁷⁰

Although a signature is *prima facie* evidence that the taxpayer knows the contents of his return, these cases establish that the government must prove more to satisfy its burden of establishing willfulness. In the FBAR context, the court in *Williams* relied on *Mohney* in holding that a taxpayer's signature on a Form 1040 with an attached Schedule B "does not itself prove his knowledge of the contents."⁷¹ The government has the burden of proving the defendant's actual knowledge of the contents of his tax return and the duty to file the

FBAR form, though that knowledge can be inferred from surrounding facts and circumstances.⁷²

In *Williams*, the court held that the government had failed to meet its burden of establishing that Williams *willfully* failed to file an FBAR, despite the fact that the defendant had pleaded guilty to tax evasion and filed a Schedule B with the "No" box checked. Among the factors considered by the court in evaluating the surrounding facts and circumstances was the fact that the accounts at issue had already been frozen at the government's request, indicating that Williams lacked any motivation to willfully conceal the accounts.⁷³ The court also found credible Williams' testimony that he only focused on the numerical calculations on his returns and relied on his accountants to complete the remainder of the return.⁷⁴ The court concluded that "upon examination of the surrounding facts and circumstances presented at trial, the Court is not persuaded that Williams was lying about his ignorance to the contents of the Form 1040."⁷⁵

Conclusion

With the IRS' recent commitment to international compliance, we will see a rise in FBAR litigation, both civil and criminal. In such cases, it will often be undisputed that an FBAR form was not filed and that the taxpayer signed a return containing a Schedule B. These cases will turn on whether the taxpayer's failure to file an FBAR was willful. Given that the FBAR has been a relatively unknown form until recently, the IRS and the DOJ start with the fact that a Schedule B was filed with taxpayers' returns to establish the taxpayer's knowledge of the filing obligation. However, more is required and that "more" is what counsel need to focus on. To impose the draconian civil penalties for a willful violation or prosecute someone for failing to file an FBAR, the government must be held to the standard of proving that there was a voluntary, intentional violation of a known legal duty.

ENDNOTES

¹ 31 USC §5322(a).

² IRM 4.26.16.4.5.3 (July 1, 2008).

³ CCA 200603026 (Jan. 20, 2006).

⁴ *J.B. Williams*, DC-VA, 2010-2 USTC ¶50,623, 2010 U.S. Dist. LEXIS 90794, *17.

⁵ *Id.*

⁶ *J.L. Cheek*, SCt, 91-1 USTC ¶50,012, 498 US 192, 201, 111 SCt 604; *P. Pomponio*, SCt, 76-2 USTC ¶9695, 429 US 10, 12-13, 97 SCt 22.

⁷ *J.R. Bishop*, CA-9, 2002-2 USTC ¶50,488, 291 F3d 1100, 1106.

⁸ *D.A. Sturman*, CA-6, 951 F2d 1466, 1476 (1991) (internal quotation marks omitted).

⁹ IRM 4.26.16.4.5.3 at ¶ 1 (July 1, 2008).

¹⁰ IRM 4.26.16.4.5.3 at ¶ 5 (July 1, 2008).

¹¹ *Supra* note 3.

¹² *Id.*

¹³ *W. Ratzlaf*, SCt, 94-1 USTC ¶50,015, 510 US 135, 114 SCt 655.

¹⁴ *Supra* note 3.

¹⁵ *Id.*

¹⁶ *Supra* note 13, 510 US, at 141 (internal quotation marks omitted).

¹⁷ *Id.* (quoting *Bank of New England, N.A.*, CA-1, 821 F2d 844, 854-859 (1987); *V. Eisenstein*, CA-11, 731 F2d 1540, 1543 (1984)); see also *A.C. Granda*, CA-5, 565 F2d 922, 926 (1978).

¹⁸ *Supra* note 13, 510 US, at 137.

ENDNOTES

- ¹⁹ *D.A. Sturman*, CA-6, 951 F2d 1466.
- ²⁰ *Id.*, at 1476.
- ²¹ *J.L. Cheek*, SCt, 91-1 USTC ¶ 50,012, 498 US 192, 111 SCt 604.
- ²² *Supra* note 19.
- ²³ *Id.*, at 1477.
- ²⁴ *Id.*
- ²⁵ *J.B. Williams*, DC-VA, 2010-2 USTC ¶ 50,623, 2010 U.S. Dist. LEXIS 81072.
- ²⁶ *J.B. Williams*, DC-VA, 2010-2 USTC ¶ 50,623, 2010 U.S. Dist. LEXIS 90794, *1-2, *appeal docketed*, No. 10-2230 (4th Cir. Nov. 2, 2010).
- ²⁷ *Id.*, at *11 (emphasis added).
- ²⁸ *Id.*, at *16.
- ²⁹ *Id.*, at *12-13.
- ³⁰ *H.V. Mohnhey*, CA-6, 92-1 USTC ¶ 50,081, 949 F2d 1397, 1407.
- ³¹ *Supra* note 26, 2010 U.S. Dist. LEXIS 90794, *1-2, at *16-17.
- ³² *Supra* note 26, 2010 U.S. Dist. LEXIS 90794, *10 (quoting *Safeco Ins. Co. of Am. v. Burr*, SCt, 551 US 47, 57, 127 SCt 2201 (2007) (citations and internal quotations omitted)).
- ³³ *Id.*, at *11 (quoting *Am. Arms Int'l v. Herbert*, CA-4, 563 F3d 78, 85 (2009)) (emphasis added).
- ³⁴ *See, e.g., W. Ratzlaf*, SCt, 94-1 USTC ¶ 50,015, 510 US 135, 114 SCt 655.
- ³⁵ IRM 4.26.16.4.5.3 at ¶ 6 (July 1, 2008).
- ³⁶ *C.D. Jewell*, CA-9, 532 F2d 697 (1975).
- ³⁷ *C.D. Jewell*, CA-9, 532 F2d 697, 700 (1976) (interpreting the “knowledge” standard).
- ³⁸ *R. Stadtmauer*, CA-3, 2010-2 USTC ¶ 50,624, 620 F3d 238, at 256; *see also J.J. Anthony*, CA-1, 2008-2 USTC ¶ 50,612, 545 F3d 60, 64-65 (explaining that deliberate avoidance undermines a claim of good faith); *W.F. Dean*, CA-11, 2007-2 USTC ¶ 50,536, 487 F3d 840, 851 (holding a willful blindness jury instruction to be appropriate where the defendant “intentionally insulated himself from knowledge of his tax obligations”).
- ³⁹ *Id.*, *Stadtmauer*, 620 F3d 238, at 256 (quoting in part *One 1973 Rolls Royce*, CA-3, 43 F3d 794, 808 (1994)).
- ⁴⁰ *A.T. Critzer*, CA-4, 74-2 USTC ¶ 9505, 498 F2d 1160, 1162.
- ⁴¹ *K.L. Dahlstrom*, CA-9, 83-2 USTC ¶ 9557, 713 F2d 1423, 1427 (emphasis added), *cert. denied*, 466 US 980 (1984), citing *Batchelder*, SCt, 442 US 114, 123, 99 SCt 2198 (1979).
- ⁴² *Id.*, *Dahlstrom*, 713 F2d 1423, at 1428, citing *A.T. Critzer*, CA-4, 74-2 USTC ¶ 9505, 498 F2d 1160, 1162.
- ⁴³ *D.R. Garber*, CA-5, 79-2 USTC ¶ 9709, 607 F2d 92, 100.
- ⁴⁴ *Id.*
- ⁴⁵ Amendment to the Bank Secrecy Act Regulations—Reports of Foreign Financial Accounts, 76 Fed. Reg. 10234 (February 24, 2011) (codified at 31 CFR 1010.350).
- ⁴⁶ Tax forms are available on the IRS website at <http://www.irs.gov/formspubs/index.html>.
- ⁴⁷ *See J.B. Williams*, *supra* note 4, at *12-13, *appeal docketed*, No. 10-2230 (4th Cir. Nov. 2, 2010).
- ⁴⁸ *H.V. Mohnhey*, CA-6, 92-1 USTC ¶ 50,081, 949 F2d 1397, 1407; *E. Dehlinger*, CA-4, 2010-1 USTC ¶ 50,267, 368 FedAppx 439, 447.
- ⁴⁹ *See Williams*, *supra* note 4, at *12-13.
- ⁵⁰ *Id.*; *supra* note 8, 951 F2d 1466, 1477.
- ⁵¹ IRM 4.26.16.4.5.3 at ¶ 6 (July 1, 2008).
- ⁵² *Supra* note 8.
- ⁵³ *P.W. Browning*, 102 TCM 460, Dec. 58,803(M), TC Memo. 2011-261.
- ⁵⁴ *Supra* note 4, at *12-17, *appeal docketed*, No. 10-2230 (4th Cir. Nov. 2, 2010).
- ⁵⁵ *Supra* note 8, at 1476-1477.
- ⁵⁶ IRM 4.26.16.4.5.3 at ¶ 6 (July 1, 2008) (emphasis added).
- ⁵⁷ *W.M. Bass*, CA-7, 70-1 USTC ¶ 9311, 425 F2d 161, 162.
- ⁵⁸ *Id.*, at 163.
- ⁵⁹ *Id.*
- ⁶⁰ *Id.* (internal citations omitted).
- ⁶¹ *J.L. Lurding*, CA-6, 50-1 USTC ¶ 9159, 179 F2d 419, 420.
- ⁶² *Id.*, at 421.
- ⁶³ *Id.*
- ⁶⁴ *Id.*, at 422.
- ⁶⁵ *H.V. Mohnhey*, CA-6, 92-1 USTC ¶ 50,081, 949 F2d 1397, 1407-08 (citing *D.W. Loney*, CA-9, 83-2 USTC ¶ 9673, 719 F2d 1435, 1436).
- ⁶⁶ *Id.*
- ⁶⁷ *Id.*
- ⁶⁸ *J. Bilbrey*, CA-6, 1998 U.S. App. LEXIS 30611, *10-11.
- ⁶⁹ *Id.*
- ⁷⁰ *Id.* (internal citations omitted).
- ⁷¹ *Supra* note 4, at *12-13, *appeal docketed*, No. 10-2230 (4th Cir. Nov. 2, 2010).
- ⁷² *See id.*
- ⁷³ *Id.*, at 14.
- ⁷⁴ *Id.*, at 16-17.
- ⁷⁵ *Id.*, at 13.

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