



Extending the FBAR Penalty Assessment Period

Publication 5970

Background

The Internal Revenue Service (IRS) makes every effort to conduct the Report of Foreign Bank and Financial Accounts (FBAR) examinations as quickly as possible. The statute of limitations for the assessment of FBAR penalties is the time period set by Congress during which FBAR penalties may be assessed.

The IRS has six years to assess civil FBAR reporting penalties from the date the FBAR is due (regardless of whether, or when, an FBAR is filed). With respect to record keeping requirements, the six years to assess civil FBAR penalties starts when you have been summonsed to produce records.

During FBAR examinations, when the statutory period for assessment is close to expiring, the IRS may request that you extend the assessment statute of limitations. This additional time allows you to provide further documentation to support your position and allows the IRS time to complete the FBAR examination. Additionally, if you do not agree with the examiner's findings, the additional time allows you to request an administrative appeal before the penalty is assessed.

Form 15616

The IRS uses Form 15616, Consent to Extend the Time to Assess Civil Penalties, for purposes of extending the statutory period for assessment of civil FBAR penalties by written agreement. The signed consent, Form 15616, is binding on you and the IRS. The consent is a fixed-date consent, which sets a specific expiration date for the length of the extension of the statute of limitations.

The IRS's examiners will request an extension period that is no longer than necessary to complete the examination and any administrative actions necessary to process your case. Additional consents to further extend the period of limitations for assessment may be signed by the mutual agreement of the parties.

Your Available Options

When an examiner requests that you sign a consent to extend the statutory period for assessment, you have two options:

- Sign an unconditional consent (a fixed-date consent). This agreement will provide the IRS with the same authority to assess FBAR penalties and you with the same appeal opportunities as would be available under the original statutory period of limitations but extends the period for those actions to be completed to the date provided for in the consent.
- Refuse to sign the consent. If you choose not to sign the consent, the IRS will take steps to assess any penalties determined to be due before the expiration of the period of limitations for assessments.

Notice of Penalties and Appeals

The IRS will send Letter 3709, FBAR 30 Day Letter, to notify you when the IRS proposes FBAR penalties. The notice gives you up to 30 days to agree to the proposed liability, or, if sufficient time remains on the period of limitations for assessment, to request a conference with Appeals.

You have the right to one Appeals conference per FBAR examination, which may be held before or after an FBAR penalty is assessed. To have an FBAR penalty considered by Appeals prior to penalty assessment, at least 365 days must remain on the assessment statute of limitations when received in Appeals. If you wish to request a conference with Appeals prior to assessment, a written protest that satisfies the requirements listed in Letter 3709 must be received by the IRS by the due date specified in the letter.

If fewer than 365 days remain on the period of limitations for assessment, we must assess the proposed penalty, even if you request an Appeals conference. You retain the right to an Appeals conference after the assessment has been made.

The IRS will send you Letter 3708, Notice and Demand for Payment of FBAR Penalty, to notify you when the IRS has assessed an FBAR penalty. If you have not previously requested a conference with Appeals, a written protest must be received by the IRS within 30 days of the date of the Letter 3708 notifying you of the assessment of the FBAR penalties.

It is important you are aware of the differences between Appeals consideration before assessment of an FBAR penalty or after assessment. If the Appeals conference is held before an FBAR penalty assessment is made, Appeals' has full settlement authority. If the Appeals conference is held after an FBAR penalty assessment is made where the penalty exceeds \$100,000, Appeals is required to secure approval from the Department of Justice for any settlement. As a result, Appeals has a limited amount of time to conduct a conference after assessment of FBAR penalties.

Fast-Track Settlement

You may be eligible for Fast Track Settlement if the civil FBAR penalty has not yet been assessed. For more information about Fast Track Settlement, see Publication 5022 if your examination is worked by Small Business/Self-Employed division, Publication 4539 if it is worked by Large Business & International Division, or Publication 5092 if it is worked by Tax Exempt/Governmental Entities division. The request for Fast Track Settlement should be made to the IRS employee handling your FBAR examination and may require the need to execute a consent.

Summary

This publication gives general information about the consent process and options available to you should the IRS ask you to extend the statutory period of limitations for the assessment of civil FBAR penalties. Specific questions should be addressed to the IRS employee requesting the consent.