

Taxpayer 1 vs. IRS 0: IRS Ruled That It Lacks Authority to Assess Foreign Informational Penalties

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In a recent ruling that could have a significant impact for taxpayers with unfiled foreign informational forms on their U.S. tax returns, the U.S. Tax Court in *Farhy v. Commissioner* held that the IRS could not assess penalties against a taxpayer for their failure to file Form 5471, *Information Return of U.S. Persons With Respect to Certain Foreign Corporations*, because, unlike other provisions, Congress had not explicitly authorized the IRS to assess these penalties.

While it remains to be seen whether the IRS will appeal the Tax Court's decision, the decision nevertheless has favorable implications for taxpayers who are contesting or have paid certain tax penalties.

A broad reading of the Tax Court's ruling indicates that the decision, in addition to Form 5471, would also apply to various other late-filed foreign informational returns, namely: Forms 5472, 8938, 926, 8858, 8992, and some disclosures associated with Form 3520.

What should taxpayers do now if they believe this could affect them?

Outstanding assessments

If a taxpayer has been assessed penalties for failing to disclose foreign assets on one or more of the above-referenced forms and has yet to pay them, they would be wise to seek advice as to the next best steps on appealing such penalties prior to payment.

Currently delinquent with foreign informational returns

Should it come to your attention that foreign informational reporting applies to your specific scenario and there is a need to amend or file these forms, you may consider doing so as expeditiously as possible. With the assistance of an accounting professional, you might have the opportunity to take advantage of the appropriate delinquent filing procedures available to taxpayers, as well as leverage the facts of the *Farhy* case to alleviate any potential penalties.

Protective claim for previously issued penalties

Based on this recent ruling, there is a potential opportunity for taxpayers to file protective claims for refunds of previously assessed and paid penalties.

In each of the above scenarios, the Tax Advisory teams at Anchin can provide support and guidance to navigate a taxpayer's next steps and help them minimize their penalty exposure based on the best approach for their specific circumstances. For further information, contact [Alan Goldenberg](#), Principal and Leader of the Tax Controversy and State and Local Tax Groups, [Kevin Brown](#), Principal of the International Tax and Private Client Groups, or your Anchin Relationship Partner.