

# Court Decision Rocks FBAR World

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Carlton Fields tax attorney Larry Kemm was quoted in the *MLEX US Tax Watch* article, “Court Decision Rocks FBAR World,” regarding the stunning decision in *US v. Colliot* stating that the IRS’s authority to impose penalties for a willful failure to file a Report of Foreign Bank and Financial Accounts (FBAR) is capped at \$100,000 per violation.

The case was initially brought by the IRS to obtain hefty civil penalties from private citizen Dominique Colliot for his alleged willful failure to file FBARs for various foreign bank accounts during several tax years. However, the judge sided with Colliot and ruled that the IRS incorrectly applied the law when calculating the defendant’s FBAR penalties.

The decision has a significant impact on the IRS; if upheld on appeal, the finding would further solidify a basis for taxpayers to file refund claims for amounts exceeding the regulatory cap, either in district courts or the U.S. Court of Federal Claims.

Kemm, who serves as Colliot’s attorney, stated, “the regulation has other limits ... \$100,000 is the overall cap, but it also limits penalties to the greater of the account balance of \$25,000. If somebody paid a penalty that violates those caps, there’s a possibility of filing a claim for refund.”

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