

Niles Elber Weighs in on 2023 FBAR Cases in Law360

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The IRS scored a victory early this year when a divided U.S. Tax Court upheld contested transfer pricing regulations, followed by a defeat in Tennessee, where a federal judge struck down rules for the 2017 tax overhaul's repatriation provision.

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The IRS and Congress, with FATCA, have done a reasonably good job of driving those who previously didn't want to comply with reporting obligations into compliance, said Niles Elber, a Member at Caplin & Drysdale. Accordingly, there are now fewer FBAR cases in general, he said.

"It's just a much smaller universe of people," he said. "That makes for a smaller number of cases."

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The Supreme Court declined on June 20 to hear Bedrosian's case.

According to Elber, the high court's decision not to address the Bedrosian penalty dispute means it's likely the IRS will seek willfulness determinations in the FBAR cases that it takes up, both practically and for resource reasons. The willfulness standard hasn't become any more difficult, he said, noting that other factors include the smaller universe of taxpayers to which FBAR penalties apply and the limits on nonwillful penalties.

"All of this is going to be driven towards, in the future, trying to impose and collect on willful FBAR penalties," Elber said.

To view the full article, please visit *Law360's* website (subscription required).

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