

Wrzesinski v. US

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The Tax Division of the DOJ recently conceded penalties assessed against a Philadelphia police officer for failing to file informational returns on foreign income. Krzysztof Wrzesinski, a Polish-American citizen, had failed to file Form 3520, or the “Annual Return to Report Transactions with Foreign Trusts and Receipt of Certain Foreign Gifts,” for money he received from his mother in 2010 and 2011 after she won the Polish lottery. Mr. Wrzesinski had engaged an accountant when he received the windfall, but he was advised that the gifts were exempt from gross income and that no filings were required.

Realizing his mistake in 2018 after researching ways to pass some of the cash to his godson, Mr. Wrzesinski immediately contacted a tax attorney and filed a reasonable cause statement under the Delinquent Informational Return Submission Procedures. The IRS nevertheless assessed penalties totaling \$207,500 under IRC 6039F(c)(1).

Wrzesinski appealed and even provided a letter from his accountant acknowledging his bad advice, but IRS appeals only abated 80% of the penalties, reasoning that those were their odds of losing in Tax Court based on the ‘Hazards of Litigation’. Mr. Wrzesinski paid the remaining \$41,500 and filed for a refund in the Eastern District of Pennsylvania.

In his Complaint, Wrzesinski pointed out that IRC 6039F(C)(2) states that penalties imposed under subsection (c)(1) *shall not* apply if the taxpayer can show reasonable cause similar to precedent set in *Estate of La Meres v. Comm’r*, 98 T.C. 294 (1992), and *United States v. Boyle*, 469 U.S. 241 (1985). The DOJ apparently thought that Mr. Wrzesinski’s reasonable

cause statements—combined with the accountant’s acknowledgement—meant that the ‘Hazards of Litigation’ should have been 100% against the IRS. On March 7, 2023, the DOJ filed a Status Report in Lieu of Answer noting that they had conceded the matter via letter to Mr. Wrzesinski’s counsel, and that the taxpayer should expect a check issued within six to eight weeks of the date of the letter.

The Wrzesinski concession comes on the heels of a major taxpayer victory in *Bittner v. United States*, where the Supreme Court determined that the IRS could only penalize taxpayers once per-report (instead of per-account) for failing to file a Report of Foreign Bank and Financial Accounts (or “FBAR”). According to the IRS Commissioner’s February 1989 Report on Civil Tax Penalties, “penalties exist for the purpose of encouraging voluntary compliance.” The *Wrzesinski* and *Bittner* cases may indicate a move by the IRS and Tax Division of the DOJ to show leniency towards taxpayers who self-report failures to file international informational returns when they can show reasonable cause for doing so.

The case is *Wrzesinski v. US*, No. 2:22-cv-03568, (E.D. Pa. Mar. 7, 2023).



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