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### Got IRS Penalties? Relying On Adviser Better Than TurboTax

No one wants trouble with the IRS, especially not penalties. But they are a part of audits and can be downright Draconian. Getting out of penalties can be a big accomplishment.

One area of frequent flubs is IRS [Form 3520](#). People know about [FATCA FBARs](#) these days and even the FATCA [Form 8938](#). But filing [Form 3520](#)? Not so much.



An owner of a foreign trust must file it or face a penalty of \$10,000 or 35% of the gross reportable amount, whichever is greater. See [IRC Section 6677\(a\)](#). Then, the penalties can snowball. If you fail to file for 90 days after the IRS notifies you, there's an **additional** \$10,000 for each 30-days up to a maximum of the gross reportable amount.

Fortunately, there's no penalty if you have reasonable cause. What's reasonable? There are no regulations defining "reasonable cause" for failing to file Form [Form 3520](#), but there is other "reasonable cause" learning.

In [James v. USA](#), Dr. Brian Chivas James created a foreign trust in Nevis, West Indies to shield his assets from malpractice claims. From 2001

through 2003, he contributed \$1,604,146, and filed [Form 3520-A](#), Annual Information Return of Foreign Trust with a U.S. Owner.

However, he failed to file the required Form 3520. He claimed that his accountant, George Famiglio, messed up. Dr. James relied on Famiglio for his personal and business taxes. He gave Famiglio all appropriate trust documents and Famiglio was supposed to handle all filings.

Dr. James wasn't trying to hide the trust, he just wasn't up on the requirements. He argued he acted prudently in hiring Famiglio so had reasonable cause. The IRS didn't agree and wouldn't let the doctor off the hook.

The IRS assessed \$578,950 in penalties for failure to file Form 3520 for 2001 through 2003. Dr. James paid and sued for a refund arguing he had reasonable cause. When the IRS asked for summary judgment, the court ruled against the IRS noting that:

- Dr. James timely provided all required data to Famiglio and relied on him to advise him on trust filings;
- There was evidence Famiglio did advise him on some trust matters; and
- Based on his conversations with Famiglio, Dr. James believed he had filed all required forms.

The court said there was a genuine issue of material fact whether Famiglio provided Dr. James with advice on which he reasonably relied. This was a nice taxpayer victory. Yet keep in mind that Dr. James had to incur significant legal expenses.

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