

IRS to Revoke Passports for Seriously Delinquent Tax Debts Starting February 2018

February 12, 2018

As detailed in our prior alert ([here](#)), Congress enacted Fixing America's Surface Transportation Act (the "FAST Act") in December 2015 and authorized the Internal Revenue Service ("IRS") to notify the Department of State ("State Department") when any individual has a "seriously delinquent tax debt." After receiving notice, the Secretary of State may deny that person the right to use, obtain, or renew a U.S. passport. Though the law was enacted more than two years ago, the IRS has not yet implemented it. That will soon change, as IRS deputy chief counsel (Operations), Drita Tonuzi, indicated during the American Bar Association midyear meeting that *the IRS will begin sending certifications of seriously delinquent tax debts to the State Department this month.*

A person has a "seriously delinquent tax debt" if the IRS has assessed a tax liability exceeding \$50,000 (adjusted each year for inflation) against that person and either filed a notice of federal tax lien and exhausted all other administrative remedies provided as part of a collection due process hearing or made a levy with respect to the assessed liability. Pursuant to recently issued IRS guidance, a "tax debt" includes U.S. individual income taxes, trust fund recovery penalties, business taxes for which the individual is liable and other civil penalties – *however, it does not include other non-tax liabilities, such as FBAR assessments under Title 31 and criminal restitution assessments.*

The IRS intends to issue certifications and decertifications of seriously delinquent tax debts systematically on a weekly basis. The IRS will also send *contemporaneous* (though not advance) notification of certification (or reversal thereof) to the taxpayer. The notification will also advise the taxpayer of their rights for judicial intervention and remedy.

When the State Department receives notification of certification, it is expected to deny the certified individual a U.S. passport (or renewal of a U.S. passport) or may revoke any U.S. passport previously issued to that individual. However, IRS Notice 2018-1, 2018-3 IRB 299, issued January 16, 2018, explains that, when a certified taxpayer applies for a passport or a passport renewal, the State Department will generally hold such application open for 90 days to allow the taxpayer a chance to resolve his or her tax delinquency or any other certification issues before denying a passport.

Certain statutory safe harbors from certification exist (see prior alert [here](#)). The IRS has also exercised its discretionary authority to add additional exclusions from certification, set forth in Internal Revenue Manual 5.19.1.5.19.4 (updated December 26, 2017). Such exclusions include debt that is determined to be currently not collectible due to hardship, debt that resulted from identity theft, taxpayers in a Disaster Zone, debt of a taxpayer in bankruptcy, debt of a deceased taxpayer, debt that is included in a pending offer in compromise or installment agreement, and debt with a pending adjustment that will result in no balance due. The Internal Revenue Manual indicates that these discretionary exclusion categories are subject to change at any time. It also provides for

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expedited decertification in certain exigent circumstances such as scheduled travel within the next 45 days or if the taxpayer resides abroad.

If a taxpayer believes that the IRS has made an erroneous certification or has improperly failed to reverse a certification, the taxpayer's sole remedy is to file suit in either federal district court or the U.S. Tax Court. A taxpayer may not avail him or herself of administrative IRS appeals to challenge a certification of a seriously delinquent tax debt.

[Caplin & Drysdale's Tax Controversy](#) attorneys are experienced in assisting individuals who owe substantial sums to the IRS and who run the risk of detection, examination, and collection action arising from any form of tax-noncompliance, including matters involving unreported foreign assets. For further information, please contact any of the attorneys below:

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