

US Passports In Jeopardy For Taxpayers Owing The IRS

by Mark D. Allison, Niles A. Elber and Dianne C. Mehany, Caplin & Drysdale

Contact: mallison@capdale.com, Tel. +1 212 379 6060; nelber@capdale.com, Tel. +1 202 862 7827; dmehany@capdale.com, Tel. +1 202 862 5068

On December 4, the United States dramatically increased the consequences of tax non-compliance when President Obama signed into law the Fixing America's Surface Transportation Act (the "FAST Act"). *The statute includes a provision placing at risk the holding of a US passport for any American taxpayer with serious debts to the Internal Revenue Service ("IRS").* More broadly, it provides the IRS with yet another weapon in the IRS's continuing push to root out and punish tax-noncompliance among taxpayers who have international tax problems or live overseas.

Background Information

Under newly enacted section 7345 of the Internal Revenue Code, if the State Department receives a certification from the IRS that a person has a "seriously delinquent tax debt," the Secretary of State may deny, revoke, or place a limitation on the person's passport.

A person has a "seriously delinquent tax debt" if the IRS has assessed a tax liability exceeding USD50,000 (adjusted each year for inflation) against the person



and either filed a notice of federal tax lien or made a levy with respect to the assessed liability. The new law requires contemporaneous notification to the individual whenever the IRS sends such a certification to the State Department.

Safe Harbor Provision Included

The statute provides a safe harbor for taxpayers who are paying their tax liabilities in a timely manner under an installment agreement or offer-in-compromise, or who are undertaking certain permitted challenges to the IRS, causing the IRS to suspend temporarily its collection action. Individuals serving in a combat zone or contingency operation, as defined in section 7508 of the Code, are also exempt from certification.

The statute also allows for removal of a valid certification where, in general, the tax debt is subsequently paid, has become legally unenforceable, or has been reduced to an installment agreement or offer in compromise, or where the affected individual seeks innocent spouse or related relief under

Section 6015 of the Code. Taxpayers may also challenge a certification in court.

Implications

US taxpayers who owe taxes, interest and/or penalties to the IRS now face a serious risk that their passports may be revoked or severely restricted. Such taxpayers should be sure to exercise their lawful rights in the IRS audit and collection processes, as the issues of taxpayer liability or ability to pay cannot be argued or litigated in the context of an IRS certification to the Department of State. And while the statute obviously

reaches those taxpayers who now owe more than USD50,000 assessed after audits, it also portends serious problems for taxpayers living abroad, or with unreported foreign assets, if the IRS later ascertains that they are non-compliant and assesses liabilities.

Many individuals with such international issues have taken the view that the IRS cannot reach them, or their assets, because they live outside the US. To the extent taxpayers now ignore IRS audit and collection activity, they run the risk of having their passports revoked.