PERSPECTIVE

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Losing Your Passport to Internal Revenue Service is Now Possible

By Robert W. Wood

Traveling abroad might be a luxury or a necessity, depending on the circumstances. But now you can add tax problems to the list of things you may need to consider when you make travel plans. The change in the law came back in 2015, as part of the Fixing America's Surface Transportation (FAST) Act. As if the tax code was not big enough already, it added a new section.

Tax code Section 7345 is labeled, "Revocation or Denial of Passport in Case of Certain Tax Delinquencies." The law isn't limited to criminal tax cases, or even cases where the IRS thinks you are trying to flee. The idea of the law is to use travel as a way to enforce tax collections. It was proposed and rejected in 2012. But by late 2015, Congress passed it and President Obama signed it.

In 2019, the IRS has reiterated its warning that taxpayers may not be able to renew their passports or get a new one if they owe $52,000 or more in federal taxes. See IRS IR-2019-23 (Feb. 27, 2019). In 2018, the IRS began implementing new procedures for individuals with "seriously delinquent tax debts." The IRS must notify the State Department of taxpayers the IRS has certified as owing a seriously delinquent tax debt. What is a "seriously delinquent tax debt?"

It generally means you owe the IRS more than $52,000 in back taxes, penalties and interest for which the IRS has filed a Notice of Federal Tax Lien, and the period to challenge it has expired or the IRS has issued a levy. The law requires State to deny a passport application or renewal from those on the IRS list. If a taxpayer currently has a valid passport, the State Department can revoke the passport or limit his or her ability to travel outside the United States.

When the IRS certifies a taxpayer to the State Department as owing a seriously delinquent tax debt, they receive a Notice CP508C from the IRS. The notice explains what steps a taxpayer needs to take to resolve the debt. Significantly, the IRS doesn't send copies of this notice to powers of attorney. So even if you have a tax lawyer or accountant who receives duplicate notices when you do, they might not know.

IRS personnel can help taxpayers set up a payment plan or make them aware of other payment alternatives. But you may want or need professional help, depending on your circumstances. The idea of the passport/tax law is to get you to pay. If a taxpayer no longer has a seriously delinquent tax debt because they paid in full or made another payment arrangement, the IRS will reverse the taxpayer's certification within 30 days.

The State Department will then remove the certification from the taxpayer's record, so their passport will not continue to be at risk.

The IRS can expedite the de-certification notice to the State Department for a taxpayer who resolves their debt, has a pending passport application and has imminent travel plans or lives abroad with an urgent need for a passport. But you should allow time to handle this too. Before denying a passport renewal or new passport application, the State Department will hold the taxpayer's application for 90 days to allow them to resolve any erroneous certification issues, make full payment of the tax debt, or enter a satisfactory payment arrangement with the IRS.

There are several ways taxpayers can avoid having the IRS notify the State Department of their seriously delinquent tax debt. Here are some possibilities: (1) Paying the tax debt in full; (2) Paying the tax debt timely under an approved installment agreement; (3) Paying the tax debt timely under an accepted offer in compromise; (4) Paying the tax debt timely under the terms of a settlement agreement with the Department of Justice; (5) Having requested or have a pending collection due process appeal with a levy; or (6) Having collection suspended because a taxpayer has made an innocent spouse election or requested innocent spouse relief.

Here are some other possibilities. How about an installment agreement? Taxpayers can ask for a payment plan with the IRS by filing Form 9465. Taxpayers can download this form from IRS.gov and mail it along with a tax return, bill or notice. Some taxpayers can use the online payment agreement to set up a monthly payment agreement.

You can also try an offer in compromise. Some taxpayers may qualify for an offer in compromise. Essentially, it is an agreement that settles the tax liability for less than the full amount owed. The IRS looks at the taxpayer's income and assets to decide the taxpayer's ability to pay. Taxpayers can use the Offer in Compromise Pre-Qualifier tool to help them decide whether they're eligible for an offer in compromise.

So far, the IRS has said that it will not certify a taxpayer as owing a seriously delinquent tax debt (or will reverse a certification) for a taxpayer: (1) Who is in bankruptcy (2) Who is deceased; (3) Who is identified by the IRS as a victim of tax-related identity theft; (4) Whose account the IRS has determined is currently not collectible due to hardship; (5) Who is located within a federally declared disaster area; (6) Who has a request pending with the IRS for an installment agreement; (7) Who has a pending offer in compromise with the IRS; or (8) Who has an IRS accepted adjustment that will satisfy the debt in full.

Also, for taxpayers serving in a combat zone who owe a seriously delinquent tax debt, the IRS postpones notifying the State Department of the delinquency and the taxpayer's passport is not subject to denial during the time of service in a combat zone.

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