

IRS BEGINS PASSPORT REVOCATION

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In February, the IRS finally began to enforce new procedures enacted in December 2015 that authorize the State Department to revoke or deny the passport of a us citizen with a “seriously delinquent tax debt.” In January, the IRS issued Notice 2018-01, 2018-3 IRB 299 to provide guidance on the new procedures.

A seriously delinquent tax debt is an individual’s unpaid, legally enforceable federal tax debt that totals more than \$50,000 (including interest and penalties) and for which (1) a notice of federal tax lien has been filed and all administrative remedies under Code section 6320 have lapsed or been exhausted or (2) a levy is made under Code section 6331. The \$50,000 threshold is indexed for inflation annually and is \$51,000 for 2018. Some tax debts are excluded from the definition of “seriously delinquent tax debt”; a tax debt is excluded if it is

- paid in a timely manner under an instalment agreement with the IRS or under an offer in compromise accepted by the IRS;
- the subject of a timely requested collection due process hearing; or
- the subject of a collection that was suspended following a request for innocent spouse relief under section 6015.

Administratively, the IRS excludes from a seriously delinquent tax debt (1) a tax liability that has been placed by the IRS in “currently not collectible” status and (2) a debt for which there is a pending bankruptcy action, a pending request for an instalment agreement, or an offer in compromise. The IRS does not exclude, however, a liability that is the subject of a case assigned to the Taxpayer Advocate Service.

The IRS must notify an individual taxpayer in writing when it certifies a seriously delinquent tax debt to the State Department by issuing a cp508c notice; the IRS also must notify the individual in writing when (and if) it reverses its certification. The IRS’s process is largely automated; cp508c notices are sent out weekly via regular mail to an individual’s last known address. The taxpayer advocate has recommended that the IRS issue a stand-alone notice 30 days before certification; she believes that the lack of pre-certification notice may violate the US Constitution’s due process clause.

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Generally, if a taxpayer believes that a certification is erroneous or that the commissioner incorrectly failed to reverse a certification when a tax debt either is fully satisfied or ceases to be a seriously delinquent tax debt, his or her sole recourse is to file a civil action in the us Tax Court or us District Court. The IRS has indicated that it will take the position that the limited judicial review does not involve questions about the underlying tax liability: a protest to IRS Appeals to challenge the certification or the decision by the IRS not to reverse such is not an option. The taxpayer may, however, contact the phone number in the cp508c notice to request reversal of the certification if he or she believes that it is erroneous.

The IRS will provide notice as soon as practicable if the certification was erroneous. The IRS will notify the State Department within 30 days of the certification's reversal when the tax debt is fully satisfied, becomes legally unenforceable, or is no longer seriously delinquent. Importantly, the IRS will not reverse a certification simply because a taxpayer pays the debt down to below the applicable threshold amount.

The IRS has indicated that administratively the State Department, before denying a certified taxpayer's passport application, should generally give the applicant 90 days to resolve his or her tax delinquency (such as by making full payment, entering into an instalment agreement, or the IRS accepting an offer in compromise) before denying the application. A taxpayer who needs his or her passport to travel within those 90 days must contact the IRS and resolve the matter within 45 days from the application date to allow the IRS adequate time to notify the State Department. Before revoking a us passport, the secretary of state may limit a previously issued passport to return travel to the United States or issue a limited passport that permits only return travel to the United States. The State Department will notify an individual in writing if a us passport application is denied or if a us passport is revoked.

Now that the IRS has begun the certification process, any us citizen residing in Canada with a seriously delinquent tax debt should take steps to resolve the debt as soon as possible to avoid a us passport problem. If the IRS makes a decision, the legal appeal options are only judicial, which is not ideal. US Customs and Border Protection continues to tell us citizens, including dual US-Canadian citizens, that they must enter the United States on a us passport. The current presidential administration leaves much uncertainty about potential changes to us immigration laws; a valid us passport may eventually be required for entry into the United States. The implementation of this 2015 law also provides another reason for a us citizen living in Canada who previously has not filed tax returns to come forward through an IRS compliance program before the IRS detects that non-compliance or before the IRS terminates its compliance programs.