

US PASSPORTS JEOPARDIZED BY UNPAID TAX?

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The US Congress has continually pursued delinquent US taxpayers through various measures, which in recent years have included FATCA, FBAR reports, and numerous voluntary disclosure programs. Congress has passed new legislation that authorizes the State Department to revoke the passport of a US citizen who has an unpaid tax liability. The controversial tax provisions are attached to the Fixing America's Surface Transportation (FAST) Act, a year-end highway funding bill that was passed by both houses of Congress on December 3 and is expected to be signed by President Obama. The tax provisions can be traced to congressional reports from 2012 that discussed the potential for using passports as a mechanism for collecting unpaid taxes. It is expected that the law, if enacted, will be effective after 2015 and will apply to existing tax debts. Some commentators have said that the law may attract constitutional challenges.

Under new Code section 7345 (Revocation or Denial of Passport in Case of Certain Tax Delinquencies), the State Department can revoke, deny, or limit the passport of anyone whom the IRS certifies as having a "seriously delinquent tax debt" in excess of \$50,000. (The \$50,000 threshold includes interest and penalties and thus can be triggered by a lower actual underlying tax debt.) A "seriously delinquent tax debt" is one that exceeds \$50,000 and for which the IRS has (1) filed a notice of federal tax lien or (2) issued a notice of levy (which gives the IRS the right to seize a taxpayer's assets). However, a tax debt is not included if it is being paid in a timely manner under an instalment agreement or an offer in compromise, or if collection efforts have been suspended because a collection due process hearing or a request for innocent-spouse relief under IRC section 6015 has been sought or is pending.

Upon receiving IRS certification that a taxpayer has a seriously delinquent tax debt, the State Department will not issue a passport to the taxpayer except in emergency circumstances or for "humanitarian" reasons. The prohibition is mandatory, and only very limited exceptions apply. The FAST Act also grants authority to the Secretary of State to take the following discretionary actions with regard to a seriously delinquent taxpayer:

- revoke a previously issued passport,

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- limit a previously issued passport for return travel only to the United States, or
- issue a limited passport to permit return travel only to the United States.

The new legislation will have a significant impact on the estimated 7 million US citizens living abroad, many of whom require a passport for work, travel, and identification. It is extremely important that US citizens living abroad pay attention to IRS notices. Domestic taxpayers must address outstanding tax debts if they exceed the threshold and if they want to travel outside the United States.