

US CITIZENSHIP RENUNCIATION PROCEDURES IN CANADA

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The US constitution protects a US citizen from automatic loss of citizenship. Expatriation can only occur through the voluntary, intentional commission of an expatriating act that is stipulated by statute. A person who committed such an act in the past (for example, through naturalization to Canadian citizenship) can memorialize the loss of nationality by making an appointment for and receiving a certificate of loss of nationality (CLN). A CLN merely evidences the prior relinquishment and is not a requirement or condition of a loss of nationality. A person can also receive a CLN by making a formal renunciation in writing before a consular officer. In either case, the appointment must be made at a US consulate outside the United States. Procedures have changed in Canada. This article comments on these procedures and on the need for a US social security number (SSN) to avoid becoming subject to expatriation tax.

Although there are standard application forms and review standards, each consular post can develop its own intake procedure and system for appointments. The traditional system is a two-step process, still in use in many consulates, by which a person is screened for eligibility and voluntariness at the first appointment. A second appointment, a couple of weeks later, allows time for review by consular staff and reflection by the applicant before he or she returns to sign documents and take the oath of renunciation. The CLN is issued several months later but is effective as of (1) the second appointment date (for formal renunciations) or (2) the date of the expatriating act (for prior relinquishments).

High-volume posts have had to devise new systems to handle the enormous increase in renunciations in recent years. The US consulates in Canada dispensed with the two-step approach a couple of years ago to open up more appointment dates. The two-step system was replaced in March 2016 by a centralized approach administered by the American Citizen Services unit of the US consulate in Vancouver. All renunciation applications now go to Vancouver for screening and review before an appointment is made at one of seven consular posts (Vancouver, Calgary, Toronto, Ottawa, Montreal, Quebec City, and Halifax). The system is the same regardless of

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whether the applicant is seeking a current renunciation or a finding of a prior relinquishment. All applicants must produce basic ID documents and proof of a second citizenship and of a residence outside the United States. Relinquishment applications require additional evidence of the prior expatriating act.

The centralized approach is intended to achieve consistency in the review and adjudication of applications and to achieve efficiency in appointment scheduling. Initially, the targeted level of efficiency did not materialize, but the situation is improving. The initial intake and review may take more than 60 days before an appointment date is assigned, which may be several months after the review. The applicant can designate one or two preferred locations for the appointment or select the first available appointment anywhere. As of the time of writing this article (late August 2016), all 2016 appointments have been assigned, and all locations are already scheduling appointments into 2017.

US expatriation taxes. The US expatriation income tax (Code section 877A) generally imposes a mark-to-market tax on the worldwide assets of a “covered expatriate”; the expatriation estate and gift tax (section 2801) generally imposes a tax on the recipient of a gift or bequest from a covered expatriate. A “covered expatriate” is an individual who, after June 16, 2008, relinquished his or her US citizenship or terminated his or her long-term permanent resident status and either (1) meets a US income tax liability test (in 2016, an average annual US income tax liability of \$161,000 over five years) or a net worth test (\$2 million) and does not meet a “dual citizen from birth” exception to those tests; or (2) fails to certify compliance with US federal income tax obligations for the five preceding tax years. Thus, it is important for a US citizen resident in Canada to plan for expatriation taxes before renouncing his or her US citizenship.

As part of that pre-renunciation planning, a US citizen resident in Canada often needs to become compliant with his or her US federal income tax obligations for the five tax years before his or her US citizenship is renounced in order to avoid triggering that arm of the covered expatriate requirements. Before becoming compliant, often a US citizen resident in Canada must first obtain a US SSN, which is required in order to file a US individual income tax return.

In many cases—specifically, for an individual who has a US birth certificate—the obtaining of an SSN typically begins with the obtaining of a US passport: the passport serves as proof of US citizenship when the individual is applying for an SSN. The Fixing America’s Surface Transportation Act, Pub. L. no. 114-94 (FAST Act), enacted in late 2015, provided that the US State Department can deny a US passport application that does not include the SSN issued to the applicant. Several commentators have said that a US citizen resident in Canada (who does not have, and never had, an SSN) was thus prevented from obtaining a US passport. The US State Department, however, recently clarified in an FAQ that a US passport application must only include an individual’s SSN if the individual has already been issued an SSN. (If no SSN has been previously issued, the passport application must simply contain zeros in box number 5.) Thus, a US citizen resident in Canada who does not already have an SSN may still obtain a US passport. In comparison, a US citizen resident in Canada who already has an SSN and who fails to include it on his or her passport application risks a delay in processing or a denial of his or her passport application. That individual is also subject to a \$500 penalty, enforced by the IRS pursuant to Code section 6039E.