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IRS Now Has The Power To Revoke Your Passport

By Robert W. Wood

The right to travel, overseas as well as domestically from state to state, seems pretty fundamental. There are even constitutional cases upholding it. And yet it is also clear that this right can be restricted and regulated.

And it now appears that one of the ways that right can be restricted starting on New Year's Day 2016 relates to your taxes. Last week, Congress and the president added a new Section 7345 to the Internal Revenue Code. Why are passport covered in the tax code, you might ask? That is a good question.

The title of the new tax code section is "Revocation or Denial of Passport in Case of Certain Tax Delinquencies." The idea goes back to 2012, when the Government Accountability Office reported on the potential for using the issuance of passports to collect taxes. It was controversial at that time, but a number of powerful people got behind it. Sen. Harry Reid (D-Nev.) got on board, and then Sen. Orrin Hatch (R-Utah).

When the passport provision was attached to the massive $305 billion highway spending bill, it seemed to sail through just fine. It is part of H.R. 22 — Fixing America's Surface Transportation Act, the "FAST Act," which the president signed Dec. 4.

The law says the State Department can revoke, deny or limit passports for anyone the Internal Revenue Service certifies as having a seriously delinquent tax debt in an amount in excess of $50,000. Administrative details about how all this will work are scant. It could mean no new passport and no renewal.

It could even mean the State Department will rescind existing passports. The State Department will evidently act when the IRS tells them, and that upsets some people. We think of passports when traveling internationally, but they are being used domestically in many cases too. The list of affected taxpayers will be compiled by the IRS.

The IRS will use a threshold of $50,000 of unpaid federal taxes. But this $50,000 figure includes penalties and interest. And as everyone knows, interest and penalties can add up fast. Notably, if you are contesting a proposed tax bill administratively with the IRS or in court, that should not count. That is not yet a tax debt.

There is also an administrative exception, allowing the State Department to issue a passport in an emergency or for humanitarian reasons. But how that will work isn't clear, nor is the amount of time it will take to get special dispensation. You would still be able to travel if your tax debt is being paid in a timely manner, as under a signed installment agreement.

The rules are not limited to criminal tax cases or where the government thinks you are fleeing a tax debt. In fact, you could have your passport revoked merely because you owe more than $50,000 and the IRS has filed a notice of lien. A $50,000 tax debt including interest and penalties is common, and the IRS files tax liens routinely. It is simply the IRS way of putting creditors on notice.

Tax liens are routine. The IRS can file a Notice of Federal Tax Lien after: (1) the IRS assesses the liability; (2) the IRS sends a notice and demand for payment saying how much you owe; and (3) you fail to pay it in full within 10 days.

There were some taxpayer protections that were added to the law in conference. There are notification requirements, and there also standards under which the IRS commissioner can reverse the certification of serious tax delinquency. There are also some limits on the authority to delegate the certification process.

The law includes a limited right to seek injunctive relief by a taxpayer who is wrongly certified as seriously delinquent. The law also requires notice to taxpayers regarding the procedures. From now on, the possible loss of a passport will be added to the list of matters required to be included in notices to taxpayer of potential collection activity.

Of course, that notice may not mean much to someone staring down a big tax bill. The law also requires that the IRS commissioner to provide contemporaneous notice to the taxpayer when the IRS sends a certification of serious delinquency to the secretary of the Treasury. The idea is to try to head off problems and give taxpayers another chance to pay before they are stranded.

Finally, in instances in which the IRS commissioner decertifies the taxpayer's status as a delinquent taxpayer, the IRS is required to provide notice to the taxpayer contemporaneous with the notice to the secretary of the Treasury. Speaking of notice, it is not off-topic to mention FATCA, the Foreign Account Tax Compliance Act.

FATCA penalizes foreign banks that don't hand over American account holders. There are approximately 8 million Americans living overseas, many of whom are still reeling from FATCA compliance problems. They obviously need their passports to get around, so this new law may make it worse.

Yet it may not be so clear that you only need a passport to travel internationally. In 2016, some fliers better have one to fly domestic. The Real ID Act created a national standard for state-issued IDs. It hits air travel in 2016. Some states initially refused to comply, fearing that the feds would make a national database of citizens.

Others cited high administrative costs and a 50 percent increase in fees for drivers. Most states are OK, but millions in Louisiana, Minnesota, New Hampshire and New York may have to start using a passport to fly domestically. Those states skipped the stricter standards for state-issued IDs.

As a result, the TSA could insist on passports rather than driver's licenses to board flights. The TSA will accept $55 passport cards and $135 passport books as valid identification. New York has been granted a waiver, so any driver's license should still work. Louisiana has a waiver until Oct. 10, 2016, meaning that existing driver's licenses work there too. Ditto for New Hampshire which has a waiver until June 1, 2016.

Bottom line? Better pay your taxes. And if you can't, there is a new reason to get an installment agreement with the IRS and stick to it.

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