

## Protect Your Passport From the IRS

By Robert W. Wood

The IRS can't *take* your passport exactly, but it can tell the State Department to do so. Whether this is a good idea can be debated, but it is the law. It wasn't even an executive order that did it. The change by Congress came in the Fixing America's Surface Transportation (FAST) Act, adding Section 7345 to the tax code. See Pub. L No. 114-94. It isn't limited to criminal tax cases, or even to cases where the IRS thinks you are trying to flee. The idea was proposed and rejected in 2012. But by late 2015, Congress passed it and President Obama signed it.

For people with big tax debts, the danger is real. Recently, 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 (February 27, 2019). In January of last year, the IRS began implementing new procedures for individuals with "seriously delinquent tax debts." If you have seriously delinquent tax debt, IRS can notify the State Department, which will not issue or renew a passport after receiving a certification from the IRS.

But despite these rules, here are some potential ways you might be able to hang onto your passport:

**Don't be 'seriously delinquent.'** A seriously delinquent tax debt is a key term, so if you don't have one, your passport is safe. If you can, keep your debt to the IRS below \$52,000. But that includes penalties and interest, so beware. A \$20,000 tax debt could eventually grow to \$52,000. And be careful, once your tax debt is labeled 'seriously delinquent,' paying it down to \$51,999 may not help. The IRS *will not* reverse a certification because the taxpayer pays the debt below \$52,000.

**Keep your dispute with IRS going.** You can usually contest tax bills if you do so promptly. The IRS usually sends multiple notices for any tax debt, and you should respond. Explain why the IRS is incorrect, and keep protesting. If you receive an IRS Notice of Proposed Deficiency or Examination Report, respond. It is sometimes called a "30-day letter," because of the deadline for response. Prepare a protest, and sign and mail it before the deadline. Keep a copy, and proof of mailing, preferably certified mail. Normally a protest will land you in the IRS Appeals Office, where you have another chance to resolve it.

**Go to Tax Court.** If you fail to protest or you don't resolve your case at IRS Appeals, you probably will receive a Notice of Deficiency. An IRS Notice of Deficiency comes via certified mail. It is often called a "90-day letter," because you have 90 days to respond. Only one response to a Notice of Deficiency is permitted: filing a Tax Court petition in the U.S. Tax Court clerk's office in Washington, D.C. The U.S. Tax Court *cannot* hear your case if you miss the 90-day deadline. You want to keep your tax dispute going so the tax debt does not become final.

**Get extensions.** You can sometimes get extensions from the IRS, so keep communicating. For many notices, the IRS will grant an extension of time to respond. In some cases, though, they can't. For example, when you receive a Notice of Deficiency (90-day letter), you must file in Tax Court within 90 days, and this date cannot be extended. Most other notices are less strict. If you do ask for an extension, confirm it in writing. In fact, confirm everything you do with the IRS in writing.

**Communicate with IRS.** If you get a certification that your debt is 'seriously delinquent,' contact the phone number listed on the IRS Notice. If you've already paid the tax debt, send proof of payment to the address on the Notice.

**Prove you need your passport.** If you need your U.S. passport to keep your job, you might be able to convince the IRS you truly need it. Once your seriously delinquent tax debt is certified, you must fully pay the balance, or make an alternative payment arrangement to keep your passport. Once you've resolved your tax problem with the IRS, the IRS will reverse the certification within 30 days of resolving the issue.

**Make an installment agreement.** It is often not too hard to get an installment agreement with the IRS to pay your tax debt over time. If you sign one, stick to its terms. Even if your debt is huge, the IRS doesn't call it 'seriously delinquent' if you are paying the installments on time.

**Offer in compromise or settlement.** You can also try this route to settle with the IRS. If the IRS accepts an offer in compromise to satisfy the debt, the rest of it can be forgiven. In some cases, the Justice Department too can enter into a settlement agreement to satisfy a tax debt.

**Innocent spouse relief.** If the tax debt was your spouse's, and you are saddled with it because of joint tax returns, you might qualify for innocent spouse treatment. This is a separate big topic, and the rules are more complex than you might think. See IRS Tax Topic 205, Innocent Spouse Relief. However, it's significant that the IRS can suspend collection efforts if you request innocent spouse relief (under IRC Section 6015).

**Due process.** There are many taxpayer protections when it comes to IRS collections. One set of protections is collection due process hearings. If you make a timely request for a collection due process hearing in connection with a levy to collect the debt, you may at least buy time to work out a deal with the IRS.

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