Forbes

Robert W. Wood
THE TAX LAWYER

TAXES 12/30/2015

Tax Double Whammy: IRS Can Revoke Passports And Uses Collection Agencies

Is the IRS trying to collect your unpaid taxes, or is it a private debt collector *acting* for the IRS? The recently passed 5-year spending bill added increased authorization for private IRS collectors. For some tax bills, the law *requires*—rather than permits—private collectors. Last year, National Taxpayer Advocate Nina Olson wrote a letter urging Congress not to allow private collectors. But Congress wants more back tax money collected, and the President signed it into law.

Private collectors usually contact you by letter, and then telephone to request full payment. If you cannot pay in full, collectors offers an installment plan for up to five years. If you can't pay over five years, the collector asks for financial detail. There is considerable worry about having taxpayer financial data in private hands.

Private collectors cannot accept payments, so do not pay them directly. Plus, the [Fair Debt Collection Practices Act] applies to private collectors. This is the same law that applies to collectors in other circumstances. Still, there is alot of angst, particularly where the IRS is actually *required* to use private collectors.

The law now requires that three conditions are met. First, ask if the tax bill is not being collected because of a lack of IRS resources or the IRS's inability to locate the taxpayer. Second, has more than 1/3 of the statute of limitations expired, with no IRS employee assigned to collect it. Finally, if the tax bill has been assigned for collection, but more than a year has passed without any interaction. If these three conditions are satisfied, expect a debt collector.

Conversely, some tax bills *cannot* go to private collectors, as where:

- There is a pending or active offer-in-compromise or installment agreement;
- It is an innocent spouse case;
- The taxpayer is deceased, under age 18, in a designated combat zone, or is a victim of identity theft;
- The taxpayer is under IRS audit, in litigation, criminal investigation, or levy; or
- The taxpayer has gone to IRS Appeals.

If you have a large tax debt, you also might have trouble traveling, since the IRS power to revoke passports was also signed into law as part of the FAST Act. We think passports are needed only internationally, but some people may find that passports are also required for domestic travel. A new section 7345 of the tax code is called "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.

The law says the State Department can revoke, deny or limit passports for anyone the IRS certifies as having a seriously delinquent tax debt in an amount in excess of $50,000. Administrative details 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 act when the IRS tells them, and that upsets some people. We think of passports when traveling internationally, but some people may find that passports are required for domestic travel. That could make the IRS hold even more serious. 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.

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's the IRS way of putting creditors on notice.

For alerts to future tax articles, email me at Wood@WoodLLP.com. This article is not legal advice.