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Yes, IRS Can Take Your Passport, Unless You Contest Taxes Due

If you owe the IRS, should the tax agency be able to revoke or cancel your passport? Whether IRS power over passports is a good idea can be debated, but last year-end, Congress enacted H.R.22, quietly adding a new section 7345 to the tax code. Its title is unambiguous: “Revocation or Denial of Passport in Case of Certain Tax Delinquencies.” The law has nothing to do with offshore accounts. It isn’t limited to criminal tax cases, or even to situations in which the IRS thinks you are trying to flee your tax debt and leave the IRS or State Department holding the bag.

In fact, the idea of this law is to use your desire–or need–to travel as a way to enforce tax collections. If you owe the IRS and want to travel, you should pay up, or you just might not be able to travel after all. The idea was considered a bad one in 2012 when first proposed. But when it surfaced again in late 2015, Congress and the President were all for it. Of course, the devil is in the details. And nine months after the IRS passport law was passed by Congress and signed by the President, many details remain unclear. The joint explanatory statement about the law is here, beginning on page 38.

The law says the State Department (not the IRS) can revoke, deny or limit passports for anyone the IRS certifies as having a seriously delinquent tax debt of more than $50,000. Yes, there are two agencies involved, but the IRS is the one trying to collect. That means no new passport and no renewal, and it could even mean the rescission or cancellation of your existing passport. The State Department is supposed to act when the IRS gives the State Department the word.

And that is where there is some good news, for it does not appear that the administrative wheels have worked out the details. Still, the idea of an inter-agency fix upsets some people who think the IRS shouldn't be involved in passports at all. But the threshold of $50,000 in unpaid federal taxes is supposed to cut out small fries and focus on the bigger tax debts the IRS is trying to collect. At least the list of taxpayers will be compiled by the IRS. Notably, the $50,000 figure includes penalties and interest, which can add up quickly. If you are contesting a proposed tax bill with the IRS or in court, it is not yet a tax ‘debt.’

You will also still be able to travel if your tax debt is being paid in a timely manner, as under an installment agreement. There is also an administrative exception that allows the State Department to issue passports in emergencies 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. In fact, you could have your passport revoked merely because you owe more than $50,000 and the IRS has filed a Notice of Federal Tax Lien. A $50,000 tax debt including interest and penalties is common, and the IRS files tax liens routinely.

The law applies to any tax debt over $50,000 regardless of whether you live in the U.S. or abroad. There are approximately eight million Americans living overseas, many of whom are still reeling from FATCA compliance problems. FATCA, the Foreign Account Tax Compliance Act, penalizes foreign banks that don’t hand over American account holders. Yet oddly, the new law might actually encourage people to *dispute* their tax bills as a way of preventing a liability over $50,000 from going final and becoming a ‘tax debt.’

And IRS notice may propose additional taxes, asking you to sign the form and mail it back if you agree. Alternatively, the letter will ask for an explanation of why the information is incorrect. You can contest it–if you do so promptly. An Examination Report may follow the first notice if you fail to respond. Most tax lawyers call the Examination Report and accompanying letter a “30-day letter”–it will say you have 30 days to respond in a so-called administrative protest.

Make sure you prepare a protest and sign and mail it before the deadline. Keep a copy, and proof of mailing. You will normally receive a response that the IRS is transferring your case to the IRS Appeals Division. The vast majority of tax cases get resolved at IRS Appeals. If you fail to protest or you don’t resolve your case at IRS Appeals, you’ll receive a Notice of Deficiency via certified mail. A Notice of Deficiency is often called a “90-day letter” by tax practitioners, because you’ll have 90 days to file a petition in U.S. Tax Court.

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