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THE TAX LAWYER

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Celebrity Leavings: Bidding Stars Adieu

Image via internationalliving.com

Leaving on a jet plane–for good–sounds diva-like, following in the footsteps of Mick Jagger, Phil Collins and David Bowie. As a tax lawyer, I hear a fair number of people talk of leaving the country for good. Most don't end up doing it, but that may be changing. So says Andrew Mitchel who reports that the number of individuals renouncing their U.S. citizenship (or terminating U.S. permanent residency) and expatriating from the U.S. continued to soar in 2011. He charts a 16% increase from 2010 and a 671% increase from 2008.

It hasn't helped that the IRS has redoubled its efforts to get U.S. taxpayers to report their worldwide income and to disclose their foreign financial accounts on FBARs, or Report of Foreign Bank and Financial Accounts, Treasury Form TD F 90-22.1. See Toxic Citizens? Apart from prospective enforcement, it also doesn't help that the IRS has mounted voluntary disclosure efforts over the past few years to help bring taxpayers into compliance. See New IRS Offshore Amnesty Announced: Third Time's A Charm. Those partial amnesty programs are a good thing, but many taxpayers continue to feel that the IRS has not done enough to forgive ***all*** penalties.

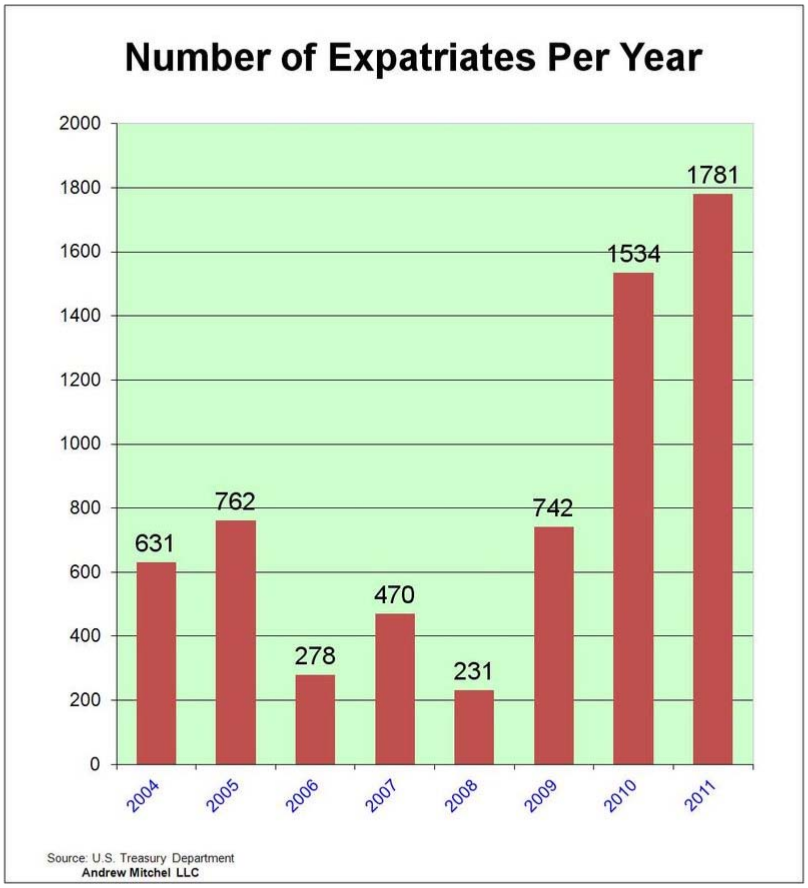
For these and other reasons, some American citizens and U.S. permanent residents are calling it quits, apparently in record numbers. Inevitably there are tax issues on the way out. See Ten Facts About Tax Expatriation. U.S. citizens or long-term residents who expatriate after June 16, 2008, are treated as having sold all their worldwide property for its fair market value the day ***before*** leaving the U.S.

The gain is taxed as a capital gain, but this "exit tax" is unforgiving and has broad application. See Rich Americans Voting With Their Feet To Escape Obama Tax Oppression. Fortunately not all expatriates face the exit tax; only "covered expatriates" do. Plus, some people born with dual citizenship who haven't had a substantial presence in the U.S. and certain minors who expatriated before the age of 18-and-a-half are also exempt. However, those people must still file an IRS Form 8854 Expatriation Information Statement.

You can escape the exit tax if you have less than $651,000 of income from the deemed sale of your assets. This exemption amount is adjusted for inflation. If your gain exceeds this amount, you must allocate the gain pro rata among all appreciated property. The exclusion must be allocated to each item of property with built-in gain on a proportional basis. As you might expect, appraisals of property are a good idea. See Fancy Appraisals Can Defeat IRS.

Even if you owe an exit tax, some are allowed to defer it. All of this involves paperwork. You must file IRS Form 8854 (in some cases for ten years). Additional special forms may be required if you have any deferred compensation items, a specified tax deferred account, certain non-grantor trusts, etc. A good resource is Notice 2009-85.

Whatever you do, get some professional advice on these issues, both from a tax lawyer and an immigration lawyer.



For more, see:

The "1 Percent" Exodus

U.S. Expat Taxes Drive Americans to Give Up Citizenship

What Do I Need to Know to Be an Expatriate?

If IRS Is Like Kryptonite, What Would Superman Do?

Ten Facts About Tax Expatriation

Primer For First Time FBAR Filers

Got FBARs? But Which One?

Should You File FBAR For The First Time?

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