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IRS Poised To Veto Passports

UPDATED: The President just signed the law, so the statements below should be read with that in mind. The [IRS power over passports was signed into law](#). It means the IRS will be able to revoke your passport for unpaid taxes. This bad idea has been kicking around for several years. This time, it is buried within 1300 pages of highway legislation. The government will surely see it as a nice complement to [FATCA](#), the Foreign Account Tax Compliance Act. That massive law penalizes foreign banks that don't hand over American account holders.

Not everyone is happy about giving the IRS power over passports. A group called American Citizens Abroad has [urged Congress to reject tying tax collection to passports](#). Their [press release](#) is worth reading. But Congress is poised to pass [H.R.22](#), which has already [passed both the House and the Senate](#). It is in conference, but is not expected to change. So, get ready for new section 7345 of the tax code, called "Revocation or Denial of Passport in Case of Certain Tax Delinquencies."



(Photo credit: Victor J. Blue/Bloomberg)

The State Department could [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. In January of 2016, the State Department will start blocking Americans with 'seriously delinquent' tax debts. Administrative details about how all this will work are scant. But in all likelihood, it will mean no new passport and no renewal. It could even mean the State Department will *rescind* existing passports of people who fall into that category.

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.

Yet the dynamics are still significant and could drastically alter how people interact with the IRS. Moreover, these harsh rules are not limited to criminal tax cases. They aren't even limited to situations where the government thinks that 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 is easy to amass today, especially considering interest and penalties. Moreover, the IRS files tax liens routinely. It's the IRS way of putting creditors on notice so the IRS eventually gets paid. In that sense, the you-can't-travel idea seems extreme. IRS tax liens cover all your property, even acquired after the lien is filed. The courts use liens to establish priority in bankruptcy proceedings and real estate sales. The IRS can file a [Notice of Federal Tax Lien](#) after:

- IRS assesses the liability;
- IRS sends a Notice and Demand for Payment saying how much you owe; and
- You fail to fully pay within 10 days.

A tax lien *can* also be filed by mistake. In most cases, there's no mistake and the IRS lien is valid. But occasionally, the person might not actually owe the taxes and may just need to straighten out a pile of paperwork. With all this in mind, if this becomes law, is it subject to challenge? Is it constitutional? The right to travel is established, both between states and internationally. And although some restrictions have been upheld, it is not clear that this measure would pass the constitutional test. Consider especially the roughly eight million Americans living overseas, many of whom are already reeling from FATCA compliance problems.

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