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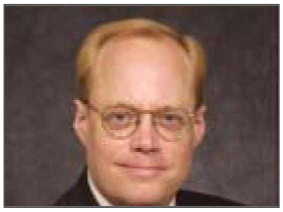

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THE TAX LAWYER

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If IRS Is Like Kryptonite, What Would Superman Do?

If you got through tax season unscathed, leaving the U.S. for tax reasons is probably the farthest thing from your mind. If Joe Biden was right that paying taxes is inherently patriotic, then not paying taxes is the other extreme. Still, some U.S. citizens and permanent residents (with green cards) are willing to give it up, hoping to give up paying IRS taxes too.

Hey, even American icon Superman may be departing U.S. soil, although the comic hero may be crossways with the Secret Service not the IRS. The Los Angeles Times reported that Clark Kent's alter ego, reprimanded by the Secret Service for appearing at a non-violent protest against the Iranian government, wants to expatriate. But regardless of why you might leave the U.S., the IRS will care.

Combining tax and immigration issues, you'll need both legal fronts addressed if you're considering this. But be careful what you read, since the law has changed multiple times in fundamental ways, most recently in 2008. Back in 1966, Congress slapped tax motivated expatriations, taxing U.S.-source income for ten years following expatriation. But a person could avoid the tax if tax avoidance was not one of his principal purposes.

Thirty years later, in 1996, Congress added a presumption of tax avoidance if an expatriate's five-year average net income tax exceeded $100,000, or the expatriate's net worth was $500,000 or more. But rebutting the presumption was pretty easy.

So, in 2004, Congress threw out tax avoidance motive altogether, imposing ten years of U.S. tax on U.S.-source gross income and gains on a net basis if you left the country for ***any*** reason. But in 2008 the law changed yet again.

New Rules. U.S. citizens or long-term residents who expatriates after June 16, 2008, are deemed to have sold all their worldwide property for its fair market value the day ***before*** leaving the U.S. That gain is taxed as a capital gain. This "exit tax" is unforgiving and has broad application, but the first $636,000 of gain (in 2011) is tax free. See Rich Americans Voting With Their Feet To Escape Obama Tax Oppression.

As you might expect, appraisals of property are a good idea if not a necessity. And there is 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.

In my experience, few people considering expatriation actually go through with it. Think it through carefully.

For more, see:

PICKET: Take your global citizenship and shove it, Superman

Ten Facts About Tax Expatriation

Instructions for Form 8854

Tax Map: Expatriation Tax

Robert W. Wood practices law with Wood & Porter, in San Francisco. The author of more than 30 books, including Taxation of Damage Awards & Settlement Payments (4th Ed. 2009, Tax Institute), he can be reached at wood@woodporter.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.