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Passports Required For Domestic Travel In 2016, But IRS Can Revoke Passports For Taxes

Think you only need a passport to board an international flight? In 2016, some fliers better have one to fly domestic, which means they had better be paying their taxes. It now looks as though your passport could be cancelled if you owe the IRS. The Real ID Act created a national standard for state-issued IDs. It hits air travel in 2016. Some states initially refused to comply, fearing that the feds would make a national database of citizens. Others cited high administrative costs and a 50% increase in fees for drivers. Most states are OK, but millions in Louisiana, Minnesota, New Hampshire and New York may have to start using a passport to fly domestically.

Those states skipped the stricter standards for state-issued IDs. As a result, the TSA could insist on passports rather than driver's licenses to board flights. The TSA will accept $55 passport cards and $135 passport books as valid identification. But some advice says that people in Minnesota should get passports by January 2016 to fly domestically. New York has been granted a waiver, so any driver's license should still work. Louisiana has a waiver until Oct. 10, 2016, meaning that existing driver's licenses work there too. Ditto for New Hampshire which has a waiver until June 1, 2016.

The easy answer may be to dig out your passport to avoid any doubt. Yet the IRS may have something to say about whether your passport is any good. H.R.22 has passed both the House and the Senate. It is expected to pass and be signed into law, adding new section 7345 to the tax code. The title of the section is "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. Sen. Harry Reid (D-Nev.) got on board, and then Sen. Orrin Hatch wrote a Memo to Reporters and Editors. The idea has grown in popularity since then. 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.

Assuming that it passes, 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.

(Photo credit: Victor J. Blue/Bloomberg)

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. Moreover, although we think of passports as useful only when traveling internationally, even stateside flights may soon make passports even more fundamental.

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