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flash Alert

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United States – Tax Debts Could Result in Revocation of Passport

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On December 4, 2015, U.S. President Barack Obama signed into law a long-term highway funding bill, H.R. 22, that includes a measure that would allow the Internal Revenue Service (IRS) to work with the U.S. State Department to revoke or deny the passport of a taxpayer with a "seriously delinquent tax debt."¹ This measure is effective from the date of enactment, but details on how it will be implemented are not yet known.

Why This Matters

Revocation or denial of one's passport is a severe consequence for failing to meet one's U.S. income tax obligations, especially for a U.S. citizen on an international assignment, as a valid U.S. passport is generally necessary to live and work abroad. However, it is important to note that revocation or denial of a passport will only occur after the IRS completes its normal examination and collection procedures, and only after taxpayers have exhausted their full administrative rights. This means, in theory, that affected taxpayers should have ample warning that they are at risk of losing their passports. However, the IRS may have difficulty corresponding with U.S. citizens living and working abroad, especially individuals who regularly change addresses.² It is therefore imperative that U.S. citizens on assignment be vigilant in meeting their U.S. individual income tax obligations and proactive in providing the IRS with correct and up-to-date contact information.

Revocation or Denial of Passport in Case of Certain Unpaid Taxes

The *Fixing America's Surface Transportation Act* ("FAST Act"), passed by Congress on December 3, 2015, and signed into law on December 4, 2015, includes a provision by which the U.S. government may revoke or deny the U.S. passport of an individual with a "seriously delinquent tax debt." Under the new law, the Secretary of State is required to deny the issuance or renewal of a passport to such individuals. Additionally, the Secretary of State is permitted to revoke the passport of such individuals and may limit a previously issued passport (or issue a new limited passport) to such individuals so that it only permits return travel to the United States.

A "seriously delinquent tax debt" is an "unpaid, legally enforceable Federal tax liability" over \$50,000 that has been assessed and with respect to which the IRS has filed a notice of lien or levy. The \$50,000 threshold is a cumulative total of taxpayer's outstanding tax debt inclusive of penalties and interest and will be adjusted annually for inflation. However, the threshold does not include amounts that are subject to an offer-in-compromise or part of an installment agreement, nor does it include any amount where collection action has been suspended because the taxpayer has made an application for innocent spouse relief or requested a collection due process hearing.

KPMG Note

Although the issuance and revocation of passports is within the purview of the Secretary of State, the Secretary of State does not have direct access to individual income tax records.

Under the FAST Act, the Commissioner of Internal Revenue must certify a list of taxpayers with seriously delinquent tax debts to the Secretary of Treasury, who in turn will transmit the list of names to the Secretary of State. Any individual on this list will be unable to obtain or renew his or her U.S. passport and is at risk of having the passport revoked.

Revocation or denial of a passport will only occur after the IRS completes its normal examination and collection procedures, including issuance of a notice of assessment, and only after taxpayers have had the opportunity exercise their full administrative rights to a fair hearing.

KPMG Note

It is still too early to comment with any certainty as to how this measure will be implemented in practice. For example, it is yet to be made clear what the procedures will be for notifying taxpayers of the denial or revocation of their passports. Yet-to-be-issued regulations and internal administrative procedures should help to clarify matters. However, the current rules and practice regarding the denial of passports to citizens who owe \$2,500 or more in child support may help point the way. The Joint Explanatory Statement³ points out that the Secretary of State may refuse to issue or renew a passport if the applicant owes child support in excess of \$2,500 or owes certain types of federal debts. When a passport is denied for arrears in child support, it can take up to four weeks for a new passport to be (re)issued once all arrears have been paid.

Revocation or Denial of Passport for Failure to Provide Valid Social Security Number

The FAST Act also authorizes the Secretary of State to deny or revoke the passport of any individual who fails to include a valid Social Security number with a passport application. The Internal Revenue Code requires passport applicants to provide a Social Security number or Taxpayer Identification Number; however the failure to provide such number was not a basis for denying an application. Rather, the State Department reports the failure to the IRS and the IRS may fine the applicant \$500.⁴

Under the FAST Act, the Secretary of State now has the power to deny a passport application if an individual does not include a Social Security number or “willfully, intentionally, negligently, or recklessly” includes an incorrect or invalid social security number. Exceptions are permitted, and a passport may be issued, in emergency circumstances or for humanitarian reasons. The Secretary of State also may revoke any passport previously issued if the application did not include a valid Social Security number, or may limit a previously issued passport (or issue a new limited passport) to such individuals for short-term use to return to the United States.

Footnotes:

1 Public Law No: 114-94, *Fixing America's Surface Transportation Act*, H.R. 22, available at: http://transportation.house.gov/uploadedfiles/fastact_xml.pdf .

2 See: *Planned Improvements Have Not Been Made to Manage and Track Correspondence with International Taxpayers*, Treasury Inspector General for Tax Administration (Sept. 8, 2015), available at: <https://www.treasury.gov/tigta/auditreports/2015reports/201530072fr.html#typographical> .

3 See: http://transportation.house.gov/uploadedfiles/joint_explanatory_statement.pdf (page 38).

4 I.R.C. section 6039E.

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