Owe Taxes? Stay Home.

By Phyllis Horn Epstein

At the end of 2015, Congress added a provision to the Internal Revenue Code (IRC§ 7345 added by Section 32101 of the Fixing America's Surface Transportation Act, the FAST Act) that allows the U.S. Department of State to revoke or deny a passport to leave the country for anyone having a "seriously delinquent tax debt." A "seriously delinquent tax debt" means an unpaid, legally enforceable federal tax liability of an individual that has been assessed, is greater than $50,000 (including tax, penalty and interest), for which there has been a notice of lien with all opportunity for administrative remedies either lapsed or denied or for which a levy has been made seizing assets.

As part of the provision, the IRS will send a Notice of Certification of Your Seriously Delinquent Federal Tax Debt to the State Department to those taxpayers with debts that meet the definition and will also identify those individuals to the State Department. The State Department will now require anyone applying for a passport to disclose his or her Social Security number, which will help identify taxpayers who have been noticed by the IRS as serious tax delinquents. Failing to insert your Social Security number on a passport application can result in a fine of $500.

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There are a few exceptions. First, if an individual is engaged with the IRS in a due-process hearing on collections or such a hearing has been requested and is pending, then the IRS will not certify that taxpayer as delinquent. Second, individuals who are under an installment agreement or compromise agreement with the IRS to pay the balance due will not find their passports in jeopardy. There is another exception for people who have requested innocent spouse relief — relief from a joint husband-wife tax liability for equitable reasons. It is yet unclear whether individuals placed in currently not-collectible status, that is, where the IRS has essentially given up trying to collect or has partial-payment agreements, will be included as an exception.

The implications could be particularly troublesome for individuals vacationing or residing overseas. In these instances, an exception is permitted for emergency or humanitarian circumstances. Congress has granted the State Department limited authority to extend or issue a passport for short-term use to enable the delinquent taxpayer to return to the United States.

The first and most obvious way to hold onto your passport is by paying your tax bill in its entirety. This option is not always ideal and not always possible. Raising $50,000 or more in cash at one time to pay the IRS can be quite a stretch for most of us. Often at this point in the collection process, the IRS has issued liens against most of the taxpayer's assets, including the asset of most value — the family home. To refinance the family home to pay off the IRS requires the temporary lifting of that lien and coordination with IRS representatives and mortgage brokers. The timing is not immediate. To suspend a lien temporarily, the IRS requires written application and suggests a wait time of at least six weeks once the application is processed. Moreover, once you ransom back your passport by paying the full balance due, you forego your taxpayer rights to negotiate the balance and penalties for reasons of economic hardship or collectability.

A second method for forestalling the loss of a passport is to enter into an installment agreement with the IRS for the payment of the balance of the tax lien. An installment agreement is a contract with the IRS for the repayment of tax in monthly increments. Most agreements are arrived at by disclosing to the IRS the location of one's assets and the value of those assets. This means informing the IRS of your bank account numbers and balances. Obviously this information is useful to the IRS for future collection actions that might one day result in the imposition of liens and asset seizures. Installment payments are also determined based upon income and statutorily determined expense limits for housing and living needs as opposed to actual expenses. This can be a time-consuming process and it is not yet known whether the loss of one's passport will be forestalled during this negotiation process. The statute itself references only those individuals who are already under agreement. The IRS has instituted "streamline" installment agreements for amounts under $100,000 that do not require full financial disclosure, but they are restrictive in terms of monthly payments. Depending on the amount owed, these agreements require either 60 or 84 equal payments and can be negotiated in a more expedited fashion. To be eligible for an installment agreement and to keep an installment agreement from

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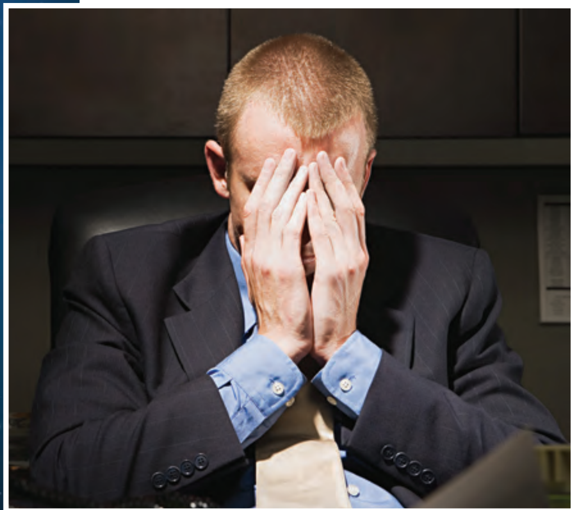
going into default, the taxpayer must remain current with filing all tax returns and paying all taxes as they become due.

A third method for avoiding the loss of a passport is to enter into a compromise agreement with the IRS. A compromise agreement generally reduces the amount of tax debt outstanding if the IRS is convinced that it is unlikely to collect the tax debt in its entirety or the taxpayer would suffer economic hardship without this compromise. The IRS will consider one's ability to pay, income, expenses and assets in deciding whether to approve a compromise agreement. The applicant must be current — and remain current — with all other tax return filing and tax payments to be eligible. If not paid in one lump sum, the balance due is generally paid out in installments over a period of six to 24 months. The likelihood of having the IRS accept a taxpayer's offer in compromise is not great: Approximately 40 percent of all compromise requests are granted. Moreover, the application process is time consuming and the decision can take months to arrive. As with installment agreements, the statute as written does not prevent the loss of a passport during this administrative process.

Once a taxpayer is back in good standing or under agreement, the IRS has 30 days to inform the State Department. In those situations where the original assessment is later determined to be erroneous, the IRS must notify the State Department as soon as practicable. However, there is no similar mandate or time frame for having passport



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restrictions lifted once the IRS sends its notification to the State Department.

If someone believes that the State Department's passport restrictions were either wrongfully applied or that the IRS hasn't acted to inform the State Department that the person is in good standing, he or she may bring an action against the United States in the U.S. District Court or the U.S. Tax Court. The sole relief authorized is to compel the U.S. Department of Treasury to notify the State Department that the restrictions should be lifted.

Inspiration for this scheme came from the U.S. Government Accountability Office (GAO), which is, according to its website, "an independent, nonpartisan agency that works for Congress" for the purpose of "ensur(ing) the accountability of the federal government for the benefit of the American people." The authority to revoke passports is already in place in circumstances where a noncustodial parent has outstanding child support arrearages in excess of $2,500. In advocating for the present law to revoke or refuse passports to "tax delinquents," the GAO believed it had identified a good source of government revenue. It observed that in 2008 the State Department issued passports to about 16 million individuals. Among those recipients, more than 224,000 individuals collectively owed more than $5.8 billion in unpaid federal taxes. This new law is an attempt to recover some of those unpaid taxes.

As this new law is implemented, it can only add to the current travel disruption faced by citizens. The time and expense to reverse a passport restriction, whether properly or improperly imposed, can be prohibitive but necessary. The time and expense to litigate these issues in court will likewise make this law a wrong without a remedy. Further, the reduction in the IRS budget has greatly reduced the personnel available to address taxpayer collection issues in a timely manner. This year all taxpayer centers have closed and are open by appointment only. The wait times for calls to the IRS have declined somewhat from past years when a caller received a "courtesy disconnect" after a four-hour wait. And yet even for practitioners like me, trying to resolve an installment agreement through the practitioner priority hotline can take at least that long. Rarely can the first person who answers the call solve the problem.

This new law spreads a wide net. While $50,000 may seem like a high target, the compounding of interest and imposition of various penalties for not filing, late filing, nonpayment of tax or late payment of tax add up quickly. The right to a passport is one we take for granted. Anyone with a tax debt should be proactive and pursue steps to be in "good standing" with the IRS or risk having that right revoked.

Pennsylvanian residents are reminded that a passport may become the sole method of acceptable identification for any air travel after Jan. 22, 2018, and for entry into federal buildings after June 7 of this year. A Pennsylvania driver's license currently fails to meet the Department of Homeland Security requirements enacted by the Real ID Act of 2005, which compels states to meet certain security standards for issuance of drivers' licenses. ⚖

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