



YOUR VOICE AT THE IRS



THE OFFICE OF THE TAXPAYER ADVOCATE OPERATES INDEPENDENTLY OF ANY OTHER IRS OFFICE AND REPORTS DIRECTLY TO CONGRESS THROUGH THE NATIONAL TAXPAYER ADVOCATE.

April 26, 2018

Control No.: TAS-13-0418-0001
Expiration Date: 04/25/2020
Impacted IRM(s): IRM 13.1.24

MEMORANDUM FOR TAXPAYER ADVOCATE SERVICE EMPLOYEES

FROM: /s/ Nina E. Olson
National Taxpayer Advocate

SUBJECT: Advocating for Taxpayers Facing Passport
Revocation/Denial

The purpose of this memorandum is to provide guidance to TAS employees advocating for taxpayers with seriously delinquent tax debt(s) subject to the IRS's Passport Certification Program.

Background

In 2015, Congress passed the Fixing America's Surface Transportation Act (FAST Act), Pub. L. No. 114-94, §32101(e), 129 Stat. 1311, 1732 (2015), which requires the Department of State (DOS) to deny a passport application and allows it to revoke or limit a passport if the IRS certifies a taxpayer's seriously delinquent tax debt. The right to travel internationally is a fundamental right, protected by the Due Process Clause of the Constitution. Under the Universal Declaration of Human Rights, adopted in 1948 by the United Nations after a unanimous vote (including the United States) "[e]veryone has the right to leave any country, including his own, and to return to his country." The National Taxpayer Advocate expressed concerns that the IRS's implementation of the passport program fails to protect taxpayers' right to travel as well as their rights promised under the Taxpayer Bill of Rights. See the [National Taxpayer Advocate's blog](#) and the [Fiscal Year 2018 Objectives Report to Congress](#).

Despite the IRS's significant discretion to exclude cases from passport certification, the IRS originally refused the National Taxpayer Advocate's repeated requests to exclude already open TAS cases. Consequently, I issued TAOs in about 750 cases. The IRS eventually agreed not to certify those taxpayers at risk of passport certification while the case in TAS remains open.

However, the issue of whether new taxpayers coming to TAS *before* they are certified is still being disputed.

The passport certification program was intended to assist the IRS with recalcitrant taxpayers who have substantial tax debts. The National Taxpayer Advocate believes that certifying taxpayers who are already actively working with TAS to try to resolve their tax debts ignores Congressional intent and serves no purpose. In Fiscal Year 2017, TAS closed over 2,700 balance due cases where the taxpayer owed more than \$50,000 and received full or partial relief. TAS obtained full or partial relief in 78.9 percent of all cases closed in Fiscal Year 2017.¹ As discussed below, taxpayers are excluded from certification if they receive Currently-not-Collectible (CNC) hardship status, but taxpayers with similar circumstances who come to TAS because they experience a significant hardship and have been unable to obtain a collection alternative or otherwise resolve their debts on their own would be certified. The legislative history of the FAST Act makes clear that Congress did not intend for a seriously delinquent tax debt to be certified to the Department of State until the taxpayer's administrative rights have been exhausted or have lapsed, and one of a taxpayer's administrative rights under the Taxpayer Bill of Rights (TBOR) is to seek assistance from TAS.

Identifying a Seriously Delinquent Tax Debt

IRC § 7345(b) defines a seriously delinquent tax debt as an “unpaid, legally enforceable federal tax liability of an individual,” which:

- Has been assessed;
- Is greater than \$50,000 (indexed annually for inflation, \$51,000 in 2018);² and
- Meets either of the following criteria: (1) a notice of lien has been filed under Internal Revenue Code (IRC) § 6323 and the Collection Due Process (CDP) hearing rights under IRC § 6320 have been exhausted or lapsed; or (2) a levy has been made under IRC § 6331.

A seriously delinquent tax debt does not include accrued but unassessed interest or penalties. It also does not include non-tax debts, such as Affordable Care Act assessments, criminal restitution assessments, child support obligations, and Foreign Bank and Financial Report (FBAR) penalties.

There are statutory exclusions, which include a debt:

- That is being timely paid through an installment agreement (IA) or offer in compromise (OIC);

¹ Data from TAMIS (Jan. 11, 2018).

² [IRM 5.19.1.5.19.2](#), *Seriously Delinquent Tax Debt* (Jan. 8, 2018).

- For which collection is suspended because the taxpayer requested a CDP hearing or a CDP hearing is pending; or
- For which collection is suspended because the taxpayer has requested relief from joint liability (known as innocent spouse relief).³

[IRM 5.19.1.5.19.4](#), *Discretionary Certification Exclusions*, provides additional exclusions from certification. At the time of publishing this Interim Guidance, the IRM included the following discretionary exclusions:

- Debt determined to be in currently not collectible (CNC) status due to hardship;⁴
- Debt that resulted from identity theft;
- Taxpayers in a disaster zone;
- Debt of a taxpayer in bankruptcy;
- Debt of a deceased taxpayer;
- Debts included in a pending OIC or pending IA; and
- Debt for which there is a pending claim and the resulting adjustment is expected to result in no balance due.⁵

The IRS will reverse a certification if the taxpayer meets either a statutory or discretionary exclusion. Additional information can be found in three sections of [IRM 5.19.1.5.19](#), *Passport Certification in Case of Certain Tax Debts*:

- [IRM 5.19.1.5.19.2](#), *Seriously Delinquent Debt*;
- [IRM 5.19.1.5.19.3](#), *Statutory Certification Exclusions*; and
- [IRM 5.19.1.5.19.4](#), *Discretionary Certification Exclusions*.

The IRS began taking steps to certify qualifying taxpayers for passport revocation/denial on January 22, 2018. TAS will take a two-phased approach in its advocacy for taxpayers with seriously delinquent debt.

TAS Advocacy – Understanding the Taxpayer’s Situation

TAS has witnessed firsthand the devastating effects on taxpayers who have had to give up their passports for even a temporary period. TAS has worked a number of cases where the IRS lost or delayed returning passports to applicants for Individual Taxpayer Identification Numbers. We have seen situations where taxpayers were unable to visit a dying family member, undergo urgent medical

³ IRC § 7345(b)(2).

⁴ Currently not collectible (CNC) status removes taxpayer accounts from active collection inventory. [IRM 5.19.17.2](#), *Currently not Collectible (CNC) Procedures* (Oct. 5, 2017). The IRS places taxpayer accounts into CNC Hardship status when “collection of the liability would create a hardship for taxpayers by leaving them unable to meet necessary living expenses.” [IRM 5.19.1.2.6.5.2](#), *Hardship CNC Closing Codes* (Oct. 18, 2017).

⁵ [IRM 5.19.1.5.19.4](#), *Discretionary Certification Exclusions* (Dec. 26, 2017).

surgery abroad, and travel for business as part of a job. TAS is likely to see similar situations because of the passport certification program.

New taxpayers coming to TAS prior to certification may not understand why the IRS is taking action and may be frustrated because they have been voluntarily trying to resolve their tax debt. Taxpayers who come to TAS after certification may feel it is unfair for the first notice they receive about the passport certification to be a notice that the IRS already certified their tax debts. Planning and paying for international travel can be a stressful experience, especially when taxpayers do not have certainty that they will be able to follow through with their plans. Exercising understanding and compassion for taxpayers in these cases, and acting with the appropriate sense of urgency, is vital.

Now that the IRS has begun certifying qualifying taxpayers to the Department of State, the TAS advocacy approach will depend on whether the IRS has not yet or has already certified the seriously delinquent tax debt to the Department of State.

Advocating for Uncertified Taxpayers with Seriously Delinquent Tax Debt

If a taxpayer has an aggregate debt over \$50,000 (indexed annually for inflation, \$51,000 in 2018), check for the existence of the unreversed TC 971 AC 641 on ENMOD. If no such TC is present, determine if the debt is eligible for passport certification (a levy or a notice of lien issued, CDP rights exhausted or lapsed, and the debt is not eligible for any statutory or discretionary exclusions). If eligible, immediately elevate the case to the Local Taxpayer Advocate (LTA) and seek the advice of a Revenue Officer Technical Advisor (ROTA) to confirm eligibility for passport certification.

If the ROTA confirms eligibility, the LTA will issue a Taxpayer Assistance Order (TAO) on Form 9102-DE, *Passport Discretionary Exception TAO Template*, to the Collection Policy Passport Analyst via the *SBSE Passport Group mailbox. This TAO orders the IRS to exclude the taxpayer's seriously delinquent tax debt(s) from certification to the Department of State (DOS) for the purposes of passport revocation, denial, or limitation while the taxpayer has an open TAS case. In the TAO template, address the specific facts and circumstances of the taxpayer's case. For example, state whether the taxpayer appears eligible for an installment agreement, an offer in compromise, or CNC status. If the taxpayer wants to submit an installment agreement but needs to first file a delinquent return and gather financial documentation, then the TAO should state TAS is working with the taxpayer to bring the taxpayer into compliance and enter into an installment agreement. If the taxpayer has a pending claim with the IRS (amended return, audit reconsideration, penalty abatement request, late original return filing after the IRS filed a substitute return, etc.), add this information to the TAO and explain whether this pending claim is expected to reduce the seriously delinquent debt below the certification threshold.

The LTA is not required to issue an Operation Assistance Request (OAR) or discuss the matter with the IRS before issuing a TAO requesting exclusion from certification based on the existence of the open TAS case because the IRS, as a matter of policy, has refused to exclude these cases from certification.

If the IRS complies with this TAO, send an email to the *SBSE Passport Group mailbox as a case closing action to notify the Collection Policy Passport Analyst of the TAS case closure so the analyst can remove the open TAS case certification block.

Advocating When the IRS Certified a Taxpayer's Debt

Identify taxpayers whom the IRS certified to the Department of State. These taxpayers will have an unreversed TC 971 AC 641 on ENMOD. *This means TAS employees must immediately alert the taxpayer to this situation and determine its urgency.*

TAS employees will discuss with the identified taxpayers the IRS passport revocation/denial certification process and steps that can be taken to resolve their debt so the IRS will decertify their accounts.

As part of their discussion with the taxpayer, TAS employees will determine and discuss the impact the passport revocation/denial will have on the taxpayer, and document the discussion in TAMIS. In other words, find out if the taxpayer currently has a passport, has a passport application or renewal pending (and the application number), and whether the taxpayer has any plans for foreign travel or other need for their passport.

TAS advocacy for taxpayers whom the IRS certified to the Department of State is a three-step process:

- Determine the urgency of the taxpayer's need for a passport or for decertification for another urgent reason;
- Resolve the seriously delinquent debt; and
- Request decertification of the debt with the Department of State.

Determine the Urgency of the Taxpayer's Need for a Passport

Although TAS will always use TAOs to advocate when resolving the debt of certified taxpayers, understanding the taxpayer's urgency will help you determine whether to use expedite decertification procedures. In addition to asking about plans for foreign travel, ask if the certification might affect the taxpayer in other ways, such as compromise of a background check or security clearance that could jeopardize employment.

Resolve the Debt

Advocate for a resolution that will remove the taxpayer from the criteria for the Passport Certification Program. For example:

- Completely satisfying the debt;
- Meeting a statutory or discretionary exclusion that will exclude the taxpayer's debt from certification (e.g., Collection Due Process hearing, CNC hardship status, pending or accepted IA, OIC);
- Having an underlying liability recalculated to reflect the taxpayer did not owe a seriously delinquent debt (e.g., audit reconsideration, appeals conference, penalty abatement, innocent spouse relief, or identity theft); or
- Providing evidence that the IRS erroneously certified the debt as seriously delinquent, meaning the taxpayer was not eligible for certification according to the statute (e.g., the taxpayer was serving in a combat zone or the liability did not exceed \$50,000 (indexed annually for inflation, \$51,000 in 2018)).

Analyze the situation and discuss the options with the taxpayer. Once you have decided on an option, gather the necessary documentation to advocate for the selected relief. If the case is complex and may take time to fully resolve, discuss with the taxpayer the possibility of entering into an Installment Agreement or Partial Pay Installment Agreement while working on a longer term resolution, in order to have the taxpayer decertified. Ensure your TAMIS histories show the reason the advocacy option was selected and your efforts to secure the necessary documentation.

Because the passport certification constitutes an extreme significant hardship, issue a TAO on Form 9102-PDRE, *Passport Debt Resolution or Exclusion TAO Template*, to the appropriate IRS function (ACS, CSCO, Exam Reconsideration, IDTVA, etc.). The TAO will require the IRS function to:

- Take the appropriate action to resolve the taxpayer's debt; and
- If the taxpayer has plans for foreign travel within 45 days or lives abroad, has a passport application or renewal pending (and provides the passport application number), also require the function to complete and sign page one of [Form 14794](#), *Expedited Passport Decertification*, and submit it to the SB/SE Passport Analyst, with a copy to TAS.

LTAs should have a conversation with the responsible management official before issuing the TAO, advising him or her of our actions, per [IRM 13.1.20.2](#) (5) Note, *Determining When to Issue a Taxpayer Assistance Order*. Order the management official to act within one business day if the taxpayer has plans for foreign travel; otherwise, order the management official to act within five business days.

For some of these TAOs, the LTA may have difficulty identifying the responsible management official. Since there is no assigned OAR preceding the TAO, the function may have several management officials whose employees could have been assigned the work via the OAR process. The appropriate OAR liaison or OAR liaison manager may be able to help the LTA choose an appropriate management official to contact and to receive the TAO.

If the taxpayer's need for foreign travel is extremely urgent, see the Taxpayers Seeking Emergency or Humanitarian Relief from the Department of State section below that explains the discretion the Department of State can exercise while the taxpayer remains certified.

Decertify the Debt with the Department of State

Once the taxpayer meets a criterion for decertification under [IRM 5.19.1.5.19.9](#), *Reversal of Certification* (e.g., the debt is fully paid or is subject to a statutory or discretionary exclusion), the taxpayer's debt needs to be decertified with the Department of State. In many cases, the taxpayer's debt will be decertified systemically, indicated by a TC 972 AC 641 on ENMOD. However, some methods used to resolve the taxpayer's seriously delinquent tax debt will require the IRS to manually decertify the taxpayer's debt. Consult Appendix A, *Manual And Systemic Decertification of Taxpayer Debts Under the Passport Certification Program*, at the end of this memorandum for lists of manual and systemic situations.

Take the following steps to ensure the IRS notifies the Department of State of the decertification:

Taxpayer / Account Status	TC 972 AC 641 and CP 508R posted to ENMOD (systemic decertification)	Taxpayer eligible for decertification but TC 972 AC 641 and/or CP 508R did not appear on ENMOD (needs manual decertification)
Taxpayer has no passport and no plans to apply for one, or the taxpayer has a passport, but does not meet the urgent travel definition below	No OAR, no TAO needed, but verify the taxpayer received the CP 508R.	TAO on Form 9102-DC (and an action item for manual decertification) seeking action within 7 workdays. Send to the *SBSE Passport Support mailbox.
Taxpayer lives abroad or plans foreign travel within 45 days and has a passport application or renewal pending	TAO on Form 9102-EDC to request expedite decertification with the DOS within one business day. Send to the *SBSE Passport Group mailbox.	TAO on Form 9102-EDC to request expedite decertification with the DOS (and an action item for manual decertification) within one business day. Send to the *SBSE Passport Group mailbox.

Prior to issuing a TAO, LTAs should have a conversation with the Collection Policy Passport Analyst, advising of our action, per [IRM 13.1.20.2 \(5\) Note, *Determining When to Issue a Taxpayer Assistance Order*](#). Once the IRS decertifies the taxpayer's debt, the Department of State advises that it could take 45 days for the Department of State to reflect the decertification in its systems. Elevate the case to the *TAS TAG Policy and Guidance mailbox and Attorney Advisor Amanda Bartmann if: (1) the Department of State does not accept the taxpayer's passport application within two weeks of the IRS transmitting the decertification to the Department of State, or (2) the taxpayer needs a passport sooner than two weeks following the decertification, but the Department of State does not accept the taxpayer's passport application. Also, see the Taxpayers Seeking Emergency or Humanitarian Relief from the Department of State section below that explains the discretion the Department of State can exercise while the taxpayer remains certified.

TAO Appeals and Elevation

LTAs and DEDCAs will follow the guidance and timeframes in [IRM 13.1.20.5, *TAO Appeal Process*](#), if the IRS appeals a passport related TAO. LTA and DEDCA TAO appeal-related secure emails must be copied to both the &TAS TAO mailbox and Attorney Advisor Amanda Bartmann.

Taxpayers Seeking Emergency or Humanitarian Relief from the Department of State

The Department of State has some discretion under [Section 32101\(e\) of the *FAST Act*](#) when the IRS notifies the Department of State that an individual has a seriously delinquent tax debt. If the taxpayer has emergency or humanitarian reasons for travel, the Department of State (not the IRS) may:

- Issue a passport;
- Limit a previously issued passport only for return travel to the United States; or
- Issue a limited passport that only permits return travel to the United States.

If the IRS has certified the seriously delinquent tax debt, and the taxpayer cites an emergency or humanitarian situation that could be relieved through use of this Department of State discretion (*e.g.*, risk of bodily harm to the taxpayer or a family member, taxpayer stranded in a war zone or country in the midst of civil strife, need to travel to receive medical care or care for a family member):

- Advise the taxpayer of the discretion available to the Department of State;

- Recommend the taxpayer [contact the Department of State](#) directly to seek relief; and
- Immediately send a secure email to Attorney Advisor Amanda Bartmann with the TAS case number and a summary of the situation. TAS is exploring if we can forward taxpayer requests for relief to the Department of State at the National Taxpayer Advocate level.

Case Coding

Use issue code 930, Passport Revocation/Denial, as the secondary issue code in applicable cases, including pre-certification efforts to resolve the taxpayer's debt to prevent IRS certification of the debt to the Department of State. The primary issue code will be the process used to resolve the taxpayer's debt (audit reconsideration, installment agreement, hardship CNC, etc.).

Effect on other documents

TAS will incorporate this guidance into the next revision of IRM 13.1.24, *Advocating for Case Resolution*.

Contact

If you have any questions, please contact Michael Kenyon, Deputy Executive Director of Case Advocacy, Technical Support, at (701) 237-8299.

Appendix A, Manual And Systemic Decertification of Taxpayer Debts Under the Passport Certification Program

Situations where the TC 972 AC 641 will not appear on ENMOD systemically, and will require manual decertification include:

- Penalty abatements under any basis except First Time Abate (e.g., not liable, IRS error, reasonable cause, etc.), which reduces (but does not fully satisfy) the taxpayer's total unpaid assessments to \$50,000 or lower (indexed annually for inflation, \$51,000 in 2018).
- An amended return or audit/ASFR/SFR reconsideration reduces (but does not fully satisfy) the total unpaid assessments to \$50,000 or lower (indexed annually for inflation, \$51,000 in 2018).
- The certification was erroneous and correction of the error does not result in the systemic posting of TC 972 AC 641 on ENMOD.
- If mirroring activity will result the requesting spouse being eligible for decertification, verify the mirroring triggers the systemic decertification on the requesting spouse's ENMOD. If it doesn't, advocate for the Passport Analyst to manually decertify the requesting spouse.
- Preparer misconduct cases that are adjusted to reduce (but not fully satisfy) the total unpaid assessments to \$50,000 or lower (indexed annually for inflation, \$51,000 in 2018).

Situations where the TC 972 AC 641 and the CP 508R will appear on ENMOD systemically (no manual decertification needed) include:

- Taxpayer makes a payment large enough to put all the certified modules into collection status 12.
- The entire unpaid assessment on all certified modules becomes unenforceable due to expiration of the CSED.
- All certified modules are being timely paid under an IA (unreversed TC 971 AC 063), or all certified modules have a posted TC 971 AC 043 pending IA indicator.
- All certified modules are in hardship currently not collectible status (posted TC 530 with a closing code of 24-32).
- All the certified modules have a pending OIC (unreversed TC 480) or an accepted OIC being timely paid (unreversed TC 780).
- An amended return, penalty abatement request, or audit/ASFR/SFR reconsideration eliminates balance owed on all certified modules (putting them in collection status 12).
- All certified modules are due to identity theft (unreversed TC 971 AC 501, 505, 506, 522, 523, or 525).
- All certified modules have disaster zone freezes (-O or -S).
- All certified modules have a bankruptcy indicator (unreversed TC 520 cc 60-67, 81, or 83-89).

- All certified modules have a pending claim expected to result in no balance due (unreversed TC 470 cc 90).
- All certified modules are suspended due to a timely requested or pending CDP hearing (unreversed TC 520 cc 76 or 77).
- All certified modules have a pending innocent spouse claim (unreversed TC 971 AC 065).