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Passport Certification

IRC § 7345

What does the non-payment of tax have to do with passports?



IRC § 7345-Revocation or denial of passport in case of certain tax delinquencies

- (a) In general. If the Secretary receives certification by the Commissioner of Internal Revenue that an individual has a **seriously delinquent tax debt**, the Secretary shall transmit such certification to the Secretary of State for action with respect to **denial, revocation, or limitation of a passport** pursuant to section 32101 of the FAST Act.



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What Tax Debts Could Result in the IRS Certifying a Taxpayer as Seriously Delinquent?



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IRC 7345 (b)-Seriously delinquent tax debt

- (1) In general. For purposes of this section, the term "**seriously delinquent tax debt**" means an unpaid, *legally enforceable* Federal tax liability of an individual-
 - (A) which has been assessed,
 - (B) which is *greater than \$50,000**, and
 - (C) with respect to which-
 - (i) a notice of lien has been filed pursuant to section 6323 *and the administrative rights under section 6320 with respect to such filing have been exhausted or have lapsed*, or
 - (ii) *a levy is made pursuant to section 6331.*

*** The \$50,000 is indexed for inflation. As of January 2018, the debt must be greater than \$51,000.**



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IRC 7345(b)(2)-Exceptions

- Such term shall not include-
 - (A) a debt that is being paid in a timely manner pursuant to an **agreement to which the individual is party under section 6159 or 7122**, and
 - (B) a debt with respect to which collection is suspended with respect to the individual-
 - (i) because a **due process hearing under section 6330 is requested or pending**, or
 - (ii) because an **election under subsection (b) or (c) of section 6015 is made or relief under subsection (f) of such section is requested**.



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IRM 5.19.1.5.19.4 (12-26-2017)

Discretionary Certification Exclusions

- IRC 7345 provides the IRS the discretion to exclude categories of tax debt from certification, even if the debt meets the criteria in IRM 5.19.1.5.19.2, Seriously Delinquent Tax Debt. The following categories of tax debt will be excluded from the determination of seriously delinquent tax debt of the IRS:
 - A. Debt that is determined to be currently not collectible (CNC) due to hardship,
 - B. Debt that resulted from identity theft,
 - C. Taxpayers in a Disaster Zone,
 - D. Debt of a taxpayer in bankruptcy
 - E. Debt of a deceased taxpayer,
 - F. Debt that is included in a pending OIC,
 - G. Debt that is included in a pending IA, &
 - H. Pending claim; resulting adjustment is expected to result in no balance due.



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5.19.1.5.19.2 (12-26-2017)

Seriously Delinquent Tax Debt

- Unless otherwise listed (statutory or discretionary exclusions) a seriously delinquent tax debt includes, but is not limited to, tax assessments made under an individual taxpayer's identification number (SSN or EIN) such as U.S. individual income taxes, trust fund recovery penalties, business taxes for which the individual is liable and other civil penalties. This does not include other non-tax liabilities such as:
 - ACA assessments, Individual SRP modules,
 - Employer Shared Responsibility Payments,
 - Criminal Restitution assessments,
 - Child Support Obligations, or
 - Report of Foreign Bank and Financial Accounts (FBAR) assessments.



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Why Doesn't Passport Revocation Violate the Taxpayer's Right to Travel?



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Right to Travel

- In the context of passport denial for unpaid child support, courts have found the statute meets due process requirements because it **provides for notice and an opportunity to be heard prior to the state agency certifying** the unpaid child support to the federal government.
- *Weinstein v. Albright*, 261 F.3d 127 (2nd Cir. 2001), aff'g 2000 WL 1154310 (S.D.N.Y. 2001).



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How Will the IRS Notify a Taxpayer That it Has Certified the Taxpayer's Seriously Delinquent Tax Debt to the State Department?



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7345(d)-Contemporaneous Notice to Individual

- The Commissioner shall **contemporaneously** notify an individual of any **certification** under subsection (a), **or any reversal of certification** under subsection (c), with respect to such individual. Such notice shall include a description in simple and nontechnical terms of the right to bring a civil action under subsection (e).



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Taxpayer Notification - Notice CP 508C

- The IRS is required to notify the taxpayer in writing at the time the IRS certifies seriously delinquent tax debt to the State Department. The IRS is also required to notify the taxpayer in writing at the time it reverses certification. The IRS will send written notice by regular mail to the taxpayer's last known address.



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Reversal Of Certification - Notice CP 508R

- The IRS will reverse a certification when:
 - The tax debt is fully satisfied or becomes legally unenforceable.
 - The tax debt is no longer seriously delinquent.
 - The certification is erroneous.
 - The IRS will make this reversal within 30 days and provide notification to the State Department as soon as practicable.



Reversal Of Certification - Notice CP 508R (cont.)

- A previously certified debt is no longer seriously delinquent when:
 - The taxpayer and the IRS enter into an installment agreement allowing the taxpayer to pay the debt over time.
 - The IRS accepts an offer in compromise to satisfy the debt.
 - The Justice Department enters into a settlement agreement to satisfy the debt.
 - Collection is suspended because the taxpayer request innocent spouse relief under IRC § 6015.
 - The taxpayer makes a timely request for a collection due process hearing in connection with a levy to collect the debt.



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Reversal Of Certification - Notice CP 508R (cont.)

- The IRS will not reverse certification where a taxpayer requests a collection due process hearing or innocent spouse relief on a debt that is not the basis of the certification.
- *The IRS will not reverse the certification because the taxpayer pays the debt below \$50,000.*



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What Can and Should a Taxpayer Do Now to Avoid Passport Certification?



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What Collection Alternatives/Proposals will Avoid Certification?

- § 6159 - Agreements for payment of tax liability in installments
- § 7122 - Compromises
- § 6330 - Notice and opportunity for hearing before levy [Collection due process]
- § 6015 - Relief from joint and several liability on joint return [Innocent Spouse]



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Does Filing for **Bankruptcy** Stop or Delay Certification under Section 7345?

- IRM 5.19.1.5.19.4 (12-26-2017) – Discretionary Certification Exclusions include bankruptcy



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Where and How Does a Taxpayer Challenge the Certification that He or She Has a Seriously Delinquent Tax Debt?



7345(e)-Judicial review of certification

- (1) In general. After the Commissioner notifies an individual under subsection (d), the taxpayer may bring a **civil action against the United States in a district court of the United States or the Tax Court** to determine whether the certification was erroneous or whether the Commissioner has failed to reverse the certification.
- (2) Determination. If the court determines that such certification was erroneous, then the **court may order the Secretary to notify the Secretary of State that such certification was erroneous.**



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Judicial Review Of Certification

- The State Department is held harmless in these matters and cannot be sued for any erroneous notification or failed decertifications under IRC § 7345.
- <https://www.irs.gov/businesses/small-businesses-self-employed/revocation-or-denial-of-passport-in-case-of-certain-unpaid-taxes>



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Judicial Review Of Certification (cont.)

- IRC § 7345 does not provide the court authority to release a lien or levy or award money damages in a suit to determine whether a certification is erroneous.



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Judicial Review Of Certification (cont.)

- The taxpayer is not required to file an administrative claim or otherwise contact the IRS to resolve the erroneous certification issue before filing suit in the U.S. Tax Court or a U.S. District Court.



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What Are the Procedures to Reverse a Certification at the IRS and at the State Department?



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IRM 5.19.1.5.19.9 (12-26-2017)

Reversal of Certification

- The IRS will systemically notify the State Department within 30 days if the previously certified tax debt is:
 - A. Fully satisfied,
 - B. Becomes legally unenforceable,
 - C. Ceases to be seriously delinquent tax debt,
- A previously certified debt ceases to be seriously delinquent tax debt when a statutory exclusion is met. See IRM 5.19.1.5.19.3, Statutory Certification Exclusions.



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IRM 5.19.1.5.19.9 (12-26-2017)

Reversal of Certification (cont.)

- The IRS has the discretion to request a decertification for other reasons. The IRS will decertify a previously certified tax debt that ceases to be seriously delinquent tax debt when a discretionary exclusion is met. See IRM 5.19.1.5.19.4, *Discretionary Certification Exclusions*.



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How Long Will it Take to Get a Certification Reversed?



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7345(c) Reversal of certification

- (1) In general

In the case of an individual with respect to whom the Commissioner makes a certification under subsection (a), the Commissioner shall notify the Secretary (and the Secretary shall subsequently notify the Secretary of State) if such certification is found to be erroneous or if the debt with respect to such certification is **fully satisfied or ceases to be a seriously delinquent tax debt by reason of subsection (b)(2).**



7345(c) Reversal of certification (cont.)

- (2) Timing of notice
- (A) *Full satisfaction of debt*

In the case of a debt that has been **fully satisfied or has become legally unenforceable**, such notification shall be made not later than the date required for issuing the certificate of release of lien with respect to such debt under section 6325(a).

- (B) *Innocent spouse relief*

In the case of an individual who makes an election under subsection (b) or (c) of section 6015, or requests relief under subsection (f) of such section, such notification shall be made **not later than 30 days after any such election or request.**



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7345(c) Reversal of certification (cont.)

- *(C) Installment agreement or offer-in-compromise*
In the case of an installment agreement under section 6159 or an offer-in-compromise under section 7122, such notification shall be made **not later than 30 days after such agreement is entered into or such offer is accepted by the Secretary.**
- *(D) Erroneous certification*
In the case of a certification found to be erroneous, such notification shall be made as soon as practicable after such finding.



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Hold of Application

- Before denying a passport, the **State Department** will **hold your application for 90** days to allow you to:
 - Resolve any erroneous certification issues
 - Make full payment of the tax debt
 - Enter into a satisfactory payment alternative with the IRS



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IRM 5.19.1.5.19.9.1 (12-26-2017)

Expedited Decertification

- 1. Request expedited decertification when all of the following conditions exist:
 - A. A certified taxpayer is eligible for decertification as described in IRM 5.19.1.5.19.9, Reversal of Certification.
 - B. The taxpayer states their foreign travel is scheduled within 45 days or less, or the taxpayer lives abroad and
 - C. The taxpayer has a pending application for a passport or renewal, and can provide their Passport Application number and Location of passport application (if applied outside the U.S.) (city, country).



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IRM 5.19.1.5.19.9.1 (12-26-2017)

Expedited Decertification (cont.)

Note:

- Taxpayers residing outside of the United States may have an urgent need for a passport without having imminent travel plans. When a taxpayer residing outside of the United States meets conditions in IRM 5.19.1.5.19.3, Statutory Certification Exclusions, or IRM 5.19.1.5.19.4, Discretionary Certification Exclusions, and self-identifies as having an urgent need for decertification, request expedited decertification.