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Advocating for Taxpayers Facing
Passport Certification



Passport Denial: Overview

Fixing America's Surface Transportation Act (FAST) Act, codified at IRC § 7345

- Dept. of State must deny a taxpayer's passport application and may revoke or limit his/her passport if the IRS certifies the taxpayer's seriously delinquent tax debt.
- Department of State has sole authority to limit, deny, or revoke a passport.
- In January, 2018, the IRS began certifying the eligible population of taxpayers in stages.



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What Happens When a Taxpayer's Debt is Certified

- Taxpayers with existing passports may still travel with those passports; however, they face the risk of revocation at any time
- Taxpayers applying for new passports will have their applications placed on hold for 90 days



Seriously Delinquent Tax Debt

- Individual federal tax liability that is assessed, unpaid, and legally enforceable
- Is greater than \$52,000 (this is the current amount for calendar year 2019, adjusted annually for inflation)
- Either (1) a notice of lien has been filed under IRC § 6323 and the CDP hearing rights under IRC § 6320 have been exhausted or lapsed; or (2) a levy has been made under IRC § 6331.



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Seriously Delinquent Tax Debt (Con't)

- Includes: trust fund recovery penalties and other civil penalties
- Excludes: Foreign Bank and Financial Accounts (FBAR), Affordable Care Act, criminal restitution assessments, and child support obligations



Statutory Exclusions

Exclusions to a Seriously Delinquent Tax Debt (IRC § 7345(b)(2)):

- Current installment agreement (IA) or offer in compromise (OIC);
- Collection Due Process (CDP) hearing requested or pending under IRC § 6330
- Innocent spouse relief requested
- Current settlement agreement with Department of Justice

Some Exclusions may not Apply to the Entire Debt

Example:

- A taxpayer owes \$75,000 for tax year 2015 and \$25,000 for tax year 2016 (total liability of \$100,000).
- The taxpayer timely requests a CDP hearing for the 2016 liability.
- The taxpayer could still be certified because the CDP hearing would only exclude \$25,000, leaving a \$75,000 debt, which is above the certification threshold.



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Additional Exceptions

- Certification delayed while person serving in combat zone or participating in a contingency operation.
- Dept. of State has authority to grant passports to certified taxpayers who have an emergency or humanitarian need to travel.



Discretionary Exclusions

IRMs 5.1.12.27.4 and 5.19.1.5.19.4

- Currently not collectible (CNC) due to hardship
- Identity theft
- Taxpayer in a disaster area
- Taxpayer in bankruptcy



Discretionary Exclusions (Con't)

IRMs 5.1.12.27.4 and 5.19.1.5.19.4

- Deceased taxpayer
- Pending Offer in Compromise or Installment Agreement
- Pending adjustment that will full pay the tax period



Advocating for CNC Hardship Status

- Taxpayer must receive an actual CNC hardship determination, not just have a pending CNC request
- Generally, taxpayers must provide a Form 433, Collection Information Statement
- If economic hardship, CNC is available even if there are unfiled returns – IRM 5.16.1.2.9

Advocating for Pending IA Status

Pending IA indicator must be input within 24 hours of receiving an IA that qualifies

IRM 5.14.1.3 provides criteria for a pending IA

1. Provide taxpayer's name and taxpayer identification number
2. Identify the tax liability to be covered by the agreement





Advocating for Pending IA Status (Con't)

3. Propose a monthly or other periodic payment of a specific amount
4. Be in compliance with filing requirements
5. Not be in bankruptcy and owe post petition taxes unless certain criteria apply



Avoiding a Solely to Delay Determination on a Pending IA

IRM 5.14.3.3 outlines criteria for solely to delay
(request only has to meet one)

1. There is no economic reality to the request
2. The request does not address changes requested
in response to a prior request



Avoiding a Solely to Delay Determination on a Pending IA (Con't)

3. The request ignores direction provided by revenue officers
4. Taxpayer has defaulted prior installment agreements
5. The request is made at a time that causes it to be classified as a request made to delay enforcement action



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Advocating for a Processible OIC

- Offers received with payment must have a processability determination within 24 hours of IRS received date
- Offer must be in writing, signed, and include all required information
- Must include application fee and payment
- Fee and payment exception for low-income taxpayers - see Form 656



Reversal of Certification (or Decertification)

IRS will decertify and notify the taxpayer and the Dept. of State if:

- the certification is found to be erroneous, or



Reversal of Certification (or Decertification) Con't

- the previously certified tax debt:
 - Is considered fully satisfied
 - becomes legally unenforceable,
 - ceases to be seriously delinquent tax debt because either a statutory or discretionary exclusion is met

Paying debt to \$52,000 or below will not reverse certification.

Paying Liability Below Certification Threshold – Example

- Taxpayer owes \$45,000 in combined assessments for tax years 2013-2015.
- Taxpayer's 2016 assessment raises total to \$55,000.
- After the IRS files a notice of federal tax lien and the CDP hearing rights have lapsed, the IRS certifies the debt to the Dept. of State.



Paying Liability Below Certification Threshold – Example (Con't)

- The Taxpayer pays \$20,000 of the tax debt, bringing the total assessed liability down to \$35,000.
- The Taxpayer needs to renew his passport to travel for work, but the IRS is not required to reverse the certification unless the taxpayer meets a decertification criterion.





Adjustments to Liabilities

IRS will reverse the certification if taxpayer never owed the seriously delinquent tax debt (i.e. the assessed liability is recalculated to at or below \$52,000):

- Audit reconsideration
- Penalty abatement claim (reasonable cause abatement will reduce certified tax debt but First Time Abate will not)
- Filing an original return after a substitute for return (SFR) assessment



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Adjustment to Liability Below Certification Threshold - Example

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Adjustment to Liability Below Certification Threshold – Example (Con't)

- Taxpayer requests an audit reconsideration for 2016 and as a result, the IRS removes the \$10,000 assessment for 2016.
- The taxpayer can request a manual decertification because the taxpayer's account now reflects that he did not owe a seriously delinquent tax debt.



Decertification Process

Decertification generally occurs systemically

1. Taxpayer meets reversal criteria (for example, requests an IA and meets pending IA criteria)
2. IRS enters transaction code on taxpayer's account to reflect a reversal criterion
3. Taxpayer's name is included when Information Technology pulls the next batch of taxpayer names to be sent to the Department of State

Decertification Process (Con't)

4. IRS transmits its periodic file to the Department of State
5. The Department of State updates its systems to reflect taxpayer is no longer certified
6. Taxpayer may now receive a passport
7. IRS mails decertification notice to the taxpayer





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Timeline for Decertification

- Once a certified taxpayer applies for a new or renewal passport, Dept. of State will hold the application open for 90 days to allow taxpayer to resolve the tax issue.
- IRS will generally notify taxpayer and Dept. of State of the decertification within 30 days of decertification criteria being met and the account being marked.
- Under the statute, the IRS must notify the Dept. of State as soon as possible if the certification is found to be erroneous.



Expedited Decertification

Expedited Procedure – IRMs 5.1.12.27.8.1 and 5.19.1.5.19.9.1

- Taxpayer must have a pending passport application, and
 - Travel planned within 45 days, or
 - Reside abroad
- Taxpayer must self-identify – IRS will not offer expedited decertification
- Reversal notice will be received up to three weeks after



Revocation and Limitation

- FAST Act § 32101(e)(2)(A) provides the Department of State with discretion to decide whether to revoke a passport.
- If a taxpayer abroad has a passport revoked or a new/renewal application denied, the Department of State has discretion to issue a limited passport for only return to the U.S per FAST Act § 32101(e)(2)(B).



Notice to Taxpayers

The FAST Act only requires two forms of notice to taxpayers:

- Language included in Collection Due Process hearing notices,
- Notice sent “contemporaneously” with the certification



Notice to Taxpayers (Con't)

- IRS sends CP 508C to taxpayer at the same time as sending certification to Dept. of State.
- Neither the certification (CP 508C) or decertification (CP 508R) notices are sent to representatives, regardless of valid POAs on file



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Appeals and Judicial Review

- There is no administrative appeal, claim process, or administrative hearing that can be filed with the IRS if the taxpayer believes that a certification is erroneous.
- Taxpayer may bring action in a U.S. district court *or* U.S. Tax Court to determine whether the certification was erroneous or whether the IRS failed to reverse it.



How Lack of Notice Harms Taxpayers

Examples from TAS cases where the lack of notice causes problems for taxpayers

- Fact pattern 1: Taxpayer enters into an installment agreement, but the Revenue Officer fails to input it.
- Fact pattern 2: Taxpayer paid liability in full, but because of delay in IRS systems, taxpayer received a certification notice two weeks after the account showed a zero balance.



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How Lack of Notice Harms Taxpayers (Con't)

- Fact pattern 3: Taxpayer is working with Revenue Officer, who gives due date to provide financial information, but account is certified before information is due.



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Working with TAS

- The IRM does not currently include an exclusion from certification for open TAS cases.
- The National Taxpayer Advocate has authorized all cases involving revocation, limitation, or denial of passport under IRC § 7345 for acceptance into TAS under Criteria 9, Public Policy.

Taxpayer Bill of Rights in Passport Situations

- Right to be informed
- Right to pay no more than the correct amount of tax
- Right to challenge the IRS's position and be heard



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Taxpayer Bill of Rights in Passport Situations (Con't)

- Right to appeal an IRS decision in an independent forum
- Right to confidentiality
- Right to retain representation
- Right a fair and just tax system



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- www.TaxpayerAdvocate.irs.gov
- www.youtube.com/tasnta
- www.facebook.com/YourVoiceAtIRS
- Call 877.777.4778
- twitter.com/YourVoiceatIRS
- File Form 911, Request for Taxpayer Advocate Service Assistance (Application for Taxpayer Assistance order)



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Further Questions

Amanda Bartmann

Attorney Advisor to the National Taxpayer Advocate

Amanda.K.Bartmann@irs.gov