U.S. Passports in Jeopardy for Taxpayers Owing the IRS

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On December 4, the United States dramatically increased the consequences of tax non-compliance when President Obama signed into law the Fixing America's Surface Transportation Act (the "FAST Act"). ***The statute includes a provision placing at risk the holding of a U.S. passport for any American taxpayer with serious debts to the Internal Revenue Service ("IRS").*** More broadly, it provides the IRS with yet another weapon in the Service's continuing push to root out and punish tax-noncompliance among taxpayers who have international tax problems or live overseas.

Under newly enacted section 7345 of the Internal Revenue Code, if the State Department receives a certification from the IRS that a person has a "seriously delinquent tax debt," the Secretary of State may deny, revoke, or place a limitation on the person's passport. A person has a "seriously delinquent tax debt" if the IRS has assessed a tax liability exceeding $50,000 (adjusted each year for inflation) against the person and either filed a notice of federal tax lien or made a levy with respect to the assessed liability. The new law requires contemporaneous notification to the individual whenever the IRS sends such a certification to the State Department.

The statute provides a safe harbor for taxpayers who are paying their tax liabilities in a timely manner under an installment agreement or offer-in-compromise, or who are undertaking certain permitted challenges to the IRS, causing the Service to suspend temporarily its collection action. Individuals serving in a combat zone or contingency operation, as defined in section 7508 of the Code, are also exempt from certification. The statute also allows for removal of a valid certification where, in general, the tax debt is subsequently paid, has become legally unenforceable, or has been reduced to an installment agreement or offer in compromise, or where the affected individual seeks innocent spouse or related relief under section 6015 of the Code. Taxpayers may also challenge a certification in court.

U.S. taxpayers who owe taxes, interest and/or penalties to the IRS now face a serious risk that their passports may be revoked or severely restricted. Such taxpayers should be sure to exercise their lawful rights in the IRS audit and collection processes, as the issues of taxpayer liability or ability to pay cannot be argued or litigated in the context of an IRS certification to the Department of State. And while the statute obviously reaches those taxpayers who now owe more than $50,000 assessed after audits, it also portends serious problems for taxpayers living abroad, or with unreported foreign assets, if the IRS later ascertains that they are non-compliant and assesses liabilities. Many individuals with such international issues have taken the view that the IRS cannot reach them, or their assets, because they live outside the U.S. To the extent taxpayers now ignore IRS audit and collection activity, they run the risk of having their passports revoked.

Caplin & Drysdale attorneys are experienced in assisting individuals who owe substantial sums to the IRS and who run the risk of detection, examination, and collection action arising from any form of tax-noncompliance, including that involving unreported foreign assets. For further information, please contact any of the attorneys below:

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