Warning: The IRS Can Now Revoke Your Passport

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Effective January 1, 2016, a seriously delinquent tax debt may result in the loss of your U.S. passport. If you have unfiled tax returns or if you owe more than $50,000 to the Internal Revenue Service ("IRS"), **the State Department can now revoke your passport.** In addition, the State Department now has the authority to **refuse to issue a passport to anyone who owes more than $50,000 in delinquent taxes.**

On December 4, 2015, President Obama signed into law the FAST ("Fixing America's Surface Transportation") Act, an infrastructure spending bill. Buried within this enormous bill are provisions related to the denial and revocation of U.S. passports. Under new Section 7345 of the Internal Revenue Code, the State Department can revoke, deny or limit passports to anyone that the IRS certifies as having a ***seriously delinquent tax debt***, defined as a debt which is in excess of $50,000. This $50,000 liability includes interest and penalties, and will be adjusted for inflation after 2016. If your tax debt has been around for a number of years, it is very common for 50% or more of the amount owed to consist of interest and penalties.

In addition, when the IRS detects that you had reportable income but did not file a tax return it will step into the shoes of the taxpayer and file a return on the taxpayer's behalf: a "Substitute For Return ("SFR"). The SFR lists income, calculates the tax due, and adds interest and a penalty for failing to file. A bill is then sent to the taxpayer at their last known residence. As the tax, interest and penalties build up from the SFR, the failure to file could lead to a revocation or denial of a passport. This is especially concerning since there are many cases where a taxpayer has moved and has not received notice of their tax liabilities, or where the taxpayer has moved abroad and has not adequately disclosed their foreign bank accounts. Failure to file a report of foreign bank and financial accounts (FBAR) carries stiff penalties, including civil penalties of $10,000 per violations for nonwillful violations that are not due to reasonable cause. For willful violations, the penalty may be the greater of $100,000 or 50% of the balance of the accounts of the violation, for each violation.

If your passport is revoked, you will be prevented from traveling outside of the United States. Furthermore, if you are abroad when your passport is revoked, **you will be forced to return to the United States immediately.** In addition to travel related problems and logistical issues, it will be impossible to open a bank or brokerage account or to operate a business abroad without a passport.

What Should I Do If the IRS Takes my Passport? First, under the statute, debt is not considered "seriously delinquent" if it is (1) under an installment agreement with the IRS; (2) if the collection process has been suspended; (3) currently subject to a Collection Due Process Hearing procedure; or (4) for which Innocent Spouse Relief has been elected. Before the IRS attempts to take a passport, you may want to consider one of these remedies. If not, the law also provides for judicial review of the IRS's attempt to revoke, limit, or deny your passport. Such a review can be taken in a district court and the U.S. Tax Court.

If you have seriously delinquent tax debt and may be faced with the prospect of losing your passport, please feel free to reach out to our firm's Trusts and Estates/Taxation Practice Group to discuss your options.