IRS TO ENFORCE PASSPORT REVOCATION

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The current US administration's changes to immigration policy have garnered substantial press and
criticism over the last few months. However, it is a law enacted in December 2015, during the
previous administration, that will soon prevent certain US citizens from travelling on a US
passport. The IRS recently announced that it is almost ready to enforce the law, which authorizes
the US Department of State to revoke or deny the passport of a US citizen who has a "seriously delinquent tax debt." The IRS indicated that it will announce on its website the
implementation of the process of certifying tax debt to the State Department and will begin that
process in "early 2017."

A "seriously delinquent tax debt" is an individual's unpaid, legally enforceable federal tax
debt that totals more than $50,000 (including interest and penalties) and for which (1) a notice of federal tax lien has been filed and all administrative remedies under Code section 6320 have lapsed or been exhausted, or (2) a levy has been made pursuant to Code section 6331. The $50,000 threshold is indexed for inflation annually. Some tax debts are excluded from the definition of "seriously delinquent," including a tax debt that is

• paid in a timely manner under an instalment agreement entered into with the IRS;
• paid in a timely manner under an offer in compromise accepted by the IRS or a settlement
agreement entered into with the Justice Department;
• the subject of a collection due process (CDP) hearing, requested in a timely manner in
connection with a levy to collect the debt; or
• the subject of a collection that was suspended following a request for innocent-spouse relief
under Code section 6015. However, it should be noted that a tax liability placed by

the IRS in
"currently not collectible" status is not an excluded item.

The IRS must notify the individual taxpayer in writing at the time that it certifies his or her seriously delinquent tax debt to the State Department, and it must notify the individual in writing when (and if) it reverses certification. The IRS will send written notice by regular mail to the individual's last known address. The IRS will notify the State Department within 30 days of the certification's reversal when the tax debt is fully satisfied, becomes legally unenforceable, or is no longer seriously delinquent. The IRS will provide notice as practicable if the certification was erroneous.

A previously certified debt is no longer seriously delinquent when

- the individual taxpayer and the IRS enter into an installment agreement allowing the individual 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 individual has requested innocent-spouse relief under Code section 6015, or
- the individual made a timely request for a CDP hearing in connection with a levy to collect the debt.

The IRS will not reverse certification of one debt if the taxpayer requests a CDP hearing or innocent-spouse relief for another debt that was not part of the certification of the first debt. Also, importantly, the IRS will not reverse a certification simply because a taxpayer pays the debt down to below $50,000. The law provides a very limited right to appeal the IRS decision to certify. If the IRS has certified an individual's debt to the State Department, the individual can file suit in the US Tax Court or a US District Court to have the court determine whether the certification is erroneous or whether the IRS failed to reverse certification when required to do so. A court that determines that a certification is erroneous or should be reversed may order its reversal.

The IRS indicated that the State Department will take action within 90 days after it receives certification from the IRS. Before revoking a US passport, the secretary of state may limit a previously issued passport to permit only return travel to the United States or may issue a limited passport that permits only return travel to the United States. The State Department will notify the individual in writing if his or her US passport application is denied or if his or her US passport is revoked.

This law is a powerful collection tool for the IRS. Furthermore, once a decision is made by the IRS, the appeal options under the law are only judicial; the recourse is not ideal. As a result, any US citizen living in Canada with seriously delinquent tax debt should take action to resolve the debt as soon as possible, especially because US Customs and Border Protection has been cracking down on enforcement of the law requiring that a US citizen, including a dual US-Canadian citizen, present a US passport upon entering the United States. This new law also provides another reason for a US citizen living in Canada, who previously has not filed tax returns, to come forward through one of the IRS's compliance programs or her non-compliance is detected by the IRS.