PASSPORT TO NOWHERE: WHAT IRS NOTICE 2018-1 MEANS FOR "SERIOUSLY DELINQUENT" TAXPAYERS

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The IRS published its first notice of the year this past Friday – ***Notice 2018-1*** – providing guidance for implementation of Internal Revenue Code Section 7345.

Wait, step back a moment... what is happening?

On December 4, 2015, the Fixing America's Surface Transportation Act (the "FAST Act") was signed into law. The FAST Act includes several provisions relating to the IRS's collection of unpaid taxes. One of those provisions directs the IRS to transmit a certification list of accounts of "seriously delinquent" taxpayers to the State Department. The State Department is directed to deny the passport applications and revoke the current passports of all taxpayers on the list. (If a taxpayer is overseas when a passport is revoked, the State Department may issue that taxpayer a limited passport only for the direct return to the United States.)

"Seriously delinquent" taxpayers are those who owe $50,000 or more in outstanding taxes, interest and penalties (adjusted annually for inflation) and for whom a lien has already been filed.

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The IRS is to exclude from "seriously delinquent" taxpayers those who are currently:

- In an installment agreement
- Making payments under an Offer in Compromise
- Appealing an IRS levy or lien through a Collection Due Process Hearing
- Requested Innocent Spouse Relief
- Serving in an area designated as a combat zone or participating in a contingency operation per Internal Revenue Code Section 7508(a)(3)

When placing a taxpayer's account on the certification list, the IRS will simultaneously send notification to the State Department and a Notice CP 508C to the taxpayer's last known address. A taxpayer may contact the telephone number on Notice CP508C to request a reversal of the certification if the taxpayer believes the certification was erroneous. A taxpayer also has a right to judicial review in a United States District Court or the United States Tax Court to determine whether the certification was erroneous.

Once the State Department receives notice, it will immediately suspend a taxpayer's passport. If that taxpayer applied for a passport, the State Department will hold the passport application for 90 days and, if the tax matter is not addressed within that 90-day period, will deny the application.

Once a taxpayer has adequately addressed the outstanding tax liability, the IRS will send a Notice CP 508R, explaining that the taxpayer is no longer on the certification list and notify the State Department of the same. Once certified as a "seriously delinquent" tax debt, paying the debt below $50,000 is not sufficient to remove the taxpayer's account from the certification list.

So, what does this Notice 2018-1 mean?

The Notice was published to provide clarification to taxpayers as to the IRS's intentions in applying the new law. It describes the statute and the IRS's procedures and advises taxpayers, from a 50,000-feet-perspective, how to address a certification.

Per the Notice, if the tax no longer qualifies as "seriously delinquent" because one of the exceptions applies after certification, the IRS will provide notice:

- If the tax is paid in full, notice within 30 days after the day the liability is fully paid
- If the tax is legally unenforceable, within 30 days after the day the tax is unenforceable
- If in an installment agreement, within 30 days the agreement is entered into
- If under an Offer in Compromise, within 30 days the offer is accepted by the IRS
- If requested Innocent Spouse Relief, within 30 days after the election or request

If the IRS determines that a taxpayer's account was wrongly certified to the State Department, it will notify the State Department "as soon as practicable" that the certification should be reversed.

The Notice advises taxpayers facing certification and revocation of their passports to pay their taxes

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in full or enter into an installment agreement or offer in compromise. A taxpayer with a seriously delinquent tax who applies for and needs a passport within the 90-day hold period must resolve the tax delinquency within 45 days of the passport application to allow the IRS time to transmit notice to the State Department.

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