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March 9, 2017

The Honorable John A. Koskinen  
Commissioner  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, D.C. 20224

**RE: Comments on Implementing Section 7345, Revocation or Denial of Passport in Case of Certain Tax Delinquencies and Request for Opportunity for Public Comments**

Dear Commissioner Koskinen:

The Texas Society of Certified Public Accountants (TSCPA) is a nonprofit, voluntary professional organization representing 27,000 members. One of TSCPA's expressed goals is to speak on behalf of its members when such action is in the best interest of its constituency and serves the cause of CPAs in Texas, as well as the public interest. TSCPA has established a Federal Tax Policy Committee (FTP) to represent those interests on tax-related matters. TSCPA's Board of Directors has authorized the FTP to submit comments on such matters of interest to committee membership. The views expressed herein have not been approved by the Board of Directors or Executive Board and, therefore, should not be construed as representing the views or policies of the TSCPA.

The IRS has placed information on its website regarding the implementation of new Internal Revenue Code (IRC) section 7345, which denies passport applications or renewals and revokes current passports for individuals owing more than \$50,000 in federal taxes. We understand the IRS intends to soon begin certification to the Secretary of the Treasury who will notify the U.S. State Department of individuals who have "seriously delinquent" tax debt.

We previously offered comments on implementing the new provision and are pleased that a number of our recommendations were included in the guidance on the website. (A copy of our July 12, 2016 letter is enclosed for your reference.) However, we believe the IRS should consider additional issues to improve administration of this provision and we again encourage the IRS to take and strongly consider public comments on this important issue before commencing any implementation. We are also concerned that, so far as we are aware, the IRS has not to date formalized a policy by publication in the Internal Revenue Manual (IRM) despite the fact that these actions can have devastating effects on citizens, particularly those whose livelihood requires travel abroad. While we support the IRS' efforts to prevent delinquent taxpayers from fleeing the country to avoid paying legitimate taxes, the website guidance seems to approach passport denials only in this abusive context. Other situations may require more finely crafted justice. These provisions will guide IRS policy for many years and we fail to understand the hasty implementation without the opportunity for public comment.

The passport revocation and denial provisions are unusual because they require the IRS to share confidential taxpayer information with the State Department and impose immediate punishment, with potentially inadequate procedures in place to provide due process. Denying or revoking a passport restricts a person's freedom to travel, can disrupt business and impede or eliminate a taxpayer's ability to generate income (and, therefore, potentially be counterproductive to collecting taxes owed). Revoking or denying passports can also separate families. Such steps should be taken only after careful review by the IRS with appeal rights related to the revocation or withdrawal to protect due process.

#### Opportunity for Public Comment

Important taxpayer rights should not be administered by merely posting guidance on a website. IRS guidance on implementation, including Notice CP 508C, should be made available for public comment. There are serious concerns regarding fair tax administration and disclosure issues. The public should have an opportunity to comment on proposed regulations or other guidance and offer practical insight needed for the IRS and the State Department to appropriately implement these policies in a way that promotes and enforces compliance without hindering voluntary compliance.

The *Administrative Procedures Act*<sup>1</sup> is designed to ensure the government receives adequate input from multiple perspectives to enhance fairness and reasonableness of rules employed to enforce tax laws. We encourage the IRS to seek public input on how it should administer this unusual new provision that can severely limit American citizens' freedom.

We raise several issues below, but the IRS could uncover a much more comprehensive list of issues to improve tax administration by inviting public comments.

#### Appeal Rights

The only appeal offered under present guidance would be filing a lawsuit in the U.S. District Court or U.S. Tax Court. A judicial appeal could be prohibitively costly and lengthy, particularly for individuals owing taxes who may be suffering financial distress. It is clear from the IRS guidance that taxpayers have no recourse of monetary damages even if a court determines the Treasury's notice of certification that a taxpayer had a seriously delinquent tax debt was erroneous. Moreover, the taxpayer would be deprived of his or her passport during time-consuming legal proceedings.

We believe it is in the best interest of both the IRS and taxpayers to offer an administrative appeal to address not only the liabilities to be certified, but also the passport revocation itself. This is particularly important in our current environment of chronic underfunding of the IRS budget, which has magnified problems for the IRS and for taxpayers attempting to work with IRS Service Center personnel, revenue

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<sup>1</sup> Pub. L. 79-404, enacted June 11, 1946, governs the way in which administrative agencies of the federal government of the United States may propose and establish regulations.

officers in the field and IRS Appeals to negotiate reasonable collection alternatives that taxpayers can successfully accomplish without default. An individual with sufficient knowledge and authority to resolve the issue should accomplish the administrative review, such as an IRS appeals officer, a governmental liaison or a Taxpayer Advocate Service representative.

For simple errors, such as mistaken identity, the IRS should provide efficient administrative procedures to quickly resolve erroneous certifications and reinstate travel credentials. The website advises that taxpayers leaving for international travel who need to resolve passport issues should call the phone number listed on Notice CP 508C, but no guidance is provided as to what situations might be resolved, what criteria would be employed or any procedures to be implemented to resolve those issues.

#### Notice to Taxpayer

The website advises that the IRS will notify the taxpayer at his or her last known address by regular mail once a seriously delinquent tax debt is certified to the State Department. It is in the best interest of both the IRS and the taxpayer that notice should be issued in the same manner as a lien or levy notice; i.e., by certified mail. Certified mail will highlight the importance of the correspondence and provide the IRS with proof the taxpayer actually received this important notification. The certified mail notification would also be helpful to the IRS in determining whether the taxpayer is no longer at the last known address, in which case the IRS could make additional efforts to locate the taxpayer. If the taxpayer does not actually receive the regular mail notice, the first real notice could be when a border patrol agent seizes the passport. Similarly, the State Department's notice that a taxpayer's passport has been revoked or denied should also be sent by certified mail. An opportunity for a final administrative appeal before issuing notice to the State Department seems appropriate in view of the potentially devastating impact and possible lack of practical and timely resolution once the passport is revoked.

The IRS should reference IRC section 7345 passport procedures in earlier assessment notices to encourage early resolution and prevent triggering State Department action on the certification or at least to place the taxpayer on notice that he or she may lose travel rights.

#### Other Issues

- *Protecting Privacy* – We are concerned about disclosure of taxpayer information outside the IRS. While this disclosure may be statutorily authorized, every effort should be made to limit the information disclosed and the people to whom it is disclosed. The IRS should clarify what information it will provide to the State Department, which State Department representatives will have access and how private taxpayer information will be protected throughout the process. The *Taxpayer Bill of Rights* assures “[t]axpayers have the right to expect that any information they provide to the IRS will not be disclosed unless authorized by the taxpayer or by law. Taxpayers have the right to expect appropriate action will be taken against employees, return preparers,

and others who wrongfully use or disclose taxpayer return information.”<sup>2</sup> Comparable penalties that apply to IRS employees for inappropriate disclosure should be extended to any offending federal employee.

- *Negotiating Payment* – The website guidance indicates the State Department will hold applications for 90 days to allow taxpayers to enter into satisfactory payment alternatives with the IRS. However, it also states there is no grace period for resolving a debt before revoking a passport. Typically, the process of resolving debt with the IRS cannot be completed in such a short period, especially if the appropriate resolution is an offer in compromise, which may take the IRS many months to process. If a taxpayer is negotiating in good faith to resolve the debt, and is not responsible for any delays, the IRS should consider reversing the certification while negotiations continue.
- *Calculating the \$50,000 Threshold* – The notice states the IRS will not reverse the State Department action on certification if the taxpayer pays the debt down to below \$50,000. If a taxpayer has commenced payments in good faith, the IRS should have the flexibility to reverse a certification to allow payments to continue. The ability to pay may depend on the taxpayer’s ability to travel outside the country for business and prohibiting such travel may inhibit the taxpayer’s ability to resolve the debt.
- *Unable to Satisfy the Debt* – The website guidance states the IRS will notify the State Department of the reversal of the certification when the debt is fully satisfied, becomes legally unenforceable or “is no longer seriously delinquent.” We believe the IRS should provide that the certification should be reversed if the IRS finds the amount exceeding \$50,000 to be “currently not collectable” under *IRS Policy Statement 5-71*.<sup>3</sup> At this stage, the IRS has seized all identifiable assets and has removed the delinquent account from the IRS collection process. If a taxpayer simply does not have the money to satisfy the debt, it should not be necessary for the taxpayer to suffer the time and expense of bankruptcy or wait many years to get a passport. This procedure would allow the taxpayer to travel without the IRS giving up other collection rights. Denial of travel should not be a punishment for being unable to pay a debt.
- *Bankruptcy* – The guidance does not address bankruptcy. It should clarify that if the taxpayer has filed for bankruptcy, under the automatic stay provisions of Title 11, section 362 of the bankruptcy law,<sup>4</sup> the IRS and State Department would be precluded from denying or revoking a passport, regardless of the amount owed.

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<sup>2</sup> *Taxpayer Bill of Rights*, #8, The Right to Confidentiality.

<sup>3</sup> IRM 1.2.14.1.14 (11-19-1980).

<sup>4</sup> U.S. Code, Title 11, chapter 3, subchapter IV, section 362 – Automatic Stay.

- *Processing Delays* – The IRS will notify the State Department within 30 days of resolution of the issue that resulted in the certification. We submit there should also be some very short time constraint on the State Department's restoring a taxpayer's right to travel.
- *Dual Citizens* – The guidance does not address the issue where a U.S. citizen has his or her passport revoked under the authority of section 7345, but holds a passport from another country, such as a person with dual citizenship. Will that individual be able to obtain a visa and travel freely to and from the U.S. or does the passport revocation procedure also result in denial of a visa?

Conclusion

The IRS has the authority to ameliorate the issues we have raised regarding this new and unusual legislation. We submit that the unresolved issues raised are significant and are likely not the only serious problems; therefore, we encourage you to pursue public comments prior to implementation to make the process more reasonable and fair. Please contact Kenneth M. Horwitz at 972-419-8383 or [kmh@gpm-law.com](mailto:kmh@gpm-law.com) if you would like to discuss our concerns.

Sincerely,



Kenneth M. Horwitz, JD, LLM, CPA  
Chair, Federal Tax Policy Committee  
Texas Society of Certified Public Accountants

Principal responsibility for drafting these comments was exercised by Kenneth M. Horwitz, JD, LLM, CPA; Christina A. Mondrik, JD, CPA; and Byron Ratliff, CPA.

Enc.: TSCPA's letter of July 12, 2016

cc: The Honorable Steven T. Mnuchin, Secretary of the Treasury, U.S. Department of the Treasury  
William M. Paul, Acting Chief Counsel and Deputy Chief Counsel (Technical), Internal Revenue Service  
Kristen E. Bailey, Director of Collection Policy, Internal Revenue Service  
Nina E. Olson, National Taxpayer Advocate



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July 12, 2016

The Honorable John A. Koskinen  
Commissioner  
Internal Revenue Service  
P.O. Box 7604; Ben Franklin Station  
Washington, D.C. 20044

RE: Request for Proposed Regulations for Public Comment Before Implementing Section 7345,  
Revocation or Denial of Passport in Case of Certain Tax Delinquencies

Dear Commissioner Koskinen:

The Texas Society of Certified Public Accountants (TSCPA) is a nonprofit, voluntary professional organization representing 28,000 members. One of the expressed goals of the TSCPA is to speak on behalf of its members when such action is in the best interest of its constituency and serves the cause of CPAs in Texas, as well as the public interest. TSCPA has established a Federal Tax Policy Committee (FTP) to represent those interests on tax-related matters. The FTP has been authorized by the TSCPA's Board of Directors to submit comments on such matters of interest to committee membership. The views expressed herein have not been approved by the Board of Directors or Executive Board and, therefore, should not be construed as representing the views or policies of the TSCPA.

The new Internal Revenue Code (IRC) Section 7345 enacted in the *Fixing America's Surface Transportation Act of 2015 (FAST)* provides for the denial of new passport or passport renewal applications and the revocation of current passports for taxpayers who owe more than \$50,000 in "delinquent" taxes. This provision is unusual because it requires the IRS to share taxpayer information with the U.S. State Department and provides for punishment, possibly with inadequate procedures to guarantee due process. Denying or revoking a passport restricts a person's freedom to travel, can disrupt business (and, therefore, potentially be counterproductive to collecting taxes owed) and separate families. This should be done only after a careful review by the IRS with clear appeal rights to protect due process. Section 7345 references only to collection due process appeals granted by lien or levy notices and does not address other valid appeals that may be pending.

The IRS has authority to administer this law fairly. We understand that the IRS is contemplating implementation of enforcement by issuance of a notice without proposing regulations with a comment period and public hearing as provided in the *Administrative Procedures Act (APA)*. The APA procedures are designed to ensure that before finalizing regulations, the government has input from multiple perspectives to enhance fairness and reasonableness of rules used to enforce the tax laws. It should be emphasized: the law does not require the commissioner to direct the secretary to notify the State Department of all cases of seriously delinquent debt. We encourage the IRS to publish

proposed regulations detailing how it will administer this unusual new provision that can severely limit the freedom of American citizens prior to issuance of any notice.

#### Protection of Privacy

The new statute requires the State Department to deny a passport application or renewal and to revoke a current passport (except possibly to return to the U.S.) if the delinquent tax debt exceeds \$50,000. It is unclear exactly what information the IRS will provide to the State Department and who within the State Department will have access to this information. The information would clearly include or at least imply that the taxpayer has a tax debt of more than \$50,000, and this would presumably have to be disclosed to State Department employees around the world who process passport applications and revocations to enable them to have the information on which to base their decisions. Such information has generally been protected from disclosure outside the IRS to protect taxpayer privacy except by issuance of a properly "authorized" Notice of Federal Tax Lien with a built-in appeal procedure. While this disclosure may be authorized by the statute, every effort should be made to limit the information disclosed and the people to whom it is disclosed.

The *Taxpayer Bill of Rights* provides the right to privacy and confidentiality, and these expectations should be preserved to the extent possible even when a taxpayer is believed to be seriously delinquent. Specifically, "[t]axpayers have the right to expect that any information they provide to the IRS will not be disclosed unless authorized by the taxpayer or by law. Taxpayers have the right to expect appropriate action will be taken against employees, return preparers, and others who wrongfully use or disclose taxpayer return information."<sup>1</sup> The IRS should promulgate regulations addressing what notice must be provided before contact is made, protecting taxpayer information after disclosure to the State Department, and addressing punitive measures or redress available when these rights are violated. Penalties for inappropriate disclosure applicable to IRS employees should be extended to any offending federal employee.

#### Procedural Issues

Section 7345 effectively gives the IRS the ability to impose what can be described as an "automatic penalty," without reference to reasonable cause exceptions, lack of willful neglect, or other due process relief. The IRS should clarify that, in addition to proper notice to the taxpayer, at a minimum, a hearing should be conducted with the taxpayer and any appeal by the taxpayer should be addressed before the passport is revoked. It is important that extreme measures such as passport revocation occur only after a taxpayer has had at least one chance to appeal the liabilities and, if upheld, negotiate collection alternatives. As an example, we note that taxpayers are frequently subject to assessment of tax or penalty by IRS service centers; it can take many months to figure out why the assessment was made and many more months to appeal such assessment as improper or subject to abatement. Regulations should provide a moratorium on passport action during the pendency of this process. As another example, identity theft victims may be victimized twice if a fraudster's actions

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<sup>1</sup> *Taxpayer Bill of Rights*, #8, The Right to Confidentiality.

result in tax liabilities that exceed \$50,000 as a result of an erroneously issued refund on the account. The regulations should address procedures directing the IRS to identify if identity theft is an issue on the account and refrain from denying or revoking passports while the identity theft claim is under review.

Under Section 7345(e), if a taxpayer believes the IRS has improperly certified that a passport should be denied or revoked, or that the certification has not been properly reversed, the taxpayer can bring action in federal district court or the U.S. Tax Court. In addition to the expense of the litigation, this will result in a significant delay during which a taxpayer might be improperly denied the freedom to travel internationally for business or personal matters. The *Taxpayer Bill of Rights* provides taxpayers the right to challenge the IRS's position and be heard, the right to appeal an IRS decision in an independent forum, and the right to a fair and just tax system. At a very minimum, the IRS should provide an administrative appeal before requiring the taxpayer to litigate the issue of whether a passport should be denied or revoked. The availability of an administrative appeal option would enhance efficiency for both the taxpayer and the IRS.

It is critical that proper notification be made to a taxpayer subject to this new statute. For example, there would be many instances where it would be difficult to have efficient communication of the issue with a U.S. citizen traveling overseas. Otherwise, the traveler's first notification of the tax issue could arise when the border patrol agent seizes the passport from the taxpayer while seeking to reenter the U.S. Given the rise in overseas travel and international business in our increasingly global economy, such actions could have a serious chilling effect on commerce if appropriate notification and appeal procedures are not put in place.

#### Determination of the \$50,000 Exemption Amount

Section 7345(b)(1)(A) defines a "seriously delinquent tax debt" as one that exceeds \$50,000. Further guidance is needed to clarify this provision. If the amount exceeding \$50,000 is found by the IRS to be "currently not collectible," under IRS Policy Statement 5-71, deficient accounts are generally removed from the IRS collection process. The same exception should apply to the process of revoking passports.

IRS regulations should clarify what constitutes the amount of the deficiency. The computation of the \$50,000 threshold should include only the amount of the underpayment of tax and should not include the possible application of penalties and interest. Regulations should also clarify whether a taxpayer can avoid passport revocation or denial by making a payment that reduces the underpayment to less than \$50,000. Revocation of a passport should not be considered where the \$50,000 level is exceeded due to a penalty if the taxpayer has a penalty abatement request pending. Passport denial or revocation should be stayed in circumstances where a taxpayer has made an "offer in compromise," requested an installment agreement, or filed a request for innocent spouse relief that is pending review or appeal. Where the amount could place the taxpayer in jeopardy of losing a passport, the IRS should expedite processing of but not short-circuit the consideration of a pending offer in compromise, request for installment agreement or request for spousal relief. Additionally,

under the automatic stay provisions contained in Title 11, Section 362 of the bankruptcy law, the IRS should be precluded from revoking a passport, regardless of the amount owed, if the taxpayer has filed for bankruptcy.

#### The Revocation and Reinstatement Process

A passport should also not be revoked if the taxpayer requested a collection due process appeal or other collection appeal hearing under Section 6330, and is challenging an interim decision by a revenue officer group. Regulations should clarify the procedure and expedited timeline for the State Department to "reinstate" a passport after the tax matter is resolved. For example, a taxpayer and the IRS may agree to an installment agreement or an offer in compromise to resolve the deficiency, which may require an extended period, often months, of processing before final approval by the IRS. An expedited approval process would be appropriate in such circumstances. Once the debt in issue has been satisfactorily resolved, the IRS should immediately (within five days, for example) reverse the certification to the State Department. To avoid possible bureaucratic delays (note that Section 32101(e)(3) of the *FAST Act* provides a hold-harmless clause for almost everyone involved), the taxpayer should receive notice from the IRS of satisfaction of the debt and should be permitted to provide it directly to the State Department to reactivate his or her passport. Proposed regulations should also include expedited timelines for the State Department to reactivate the passport upon receipt of such notification from the IRS.

#### Conclusion

The IRS has the authority to ameliorate the issues we have raised above regarding this new and unusual legislation. We encourage you to provide proposed regulations to enable the public to comment to make the process more reasonable and fair.

Sincerely,



Kenneth M. Horwitz, JD, LLM, CPA  
Chair, Federal Tax Policy Committee  
Texas Society of Certified Public Accountants

Principal responsibility for drafting these comments was exercised by Kenneth M. Horwitz, JD, LLM, CPA and Christina A. Mondrik, JD, CPA, and Byron Ratliff, CPA.

cc: The Honorable Mark J. Mazur, Assistant Secretary of Tax Policy, Department of the Treasury  
The Honorable William J. Wilkins, Chief Counsel, Internal Revenue Service  
Kristen E. Bailey, Director of Collection Policy, Internal Revenue Service  
Nina E. Olson, National Taxpayer Advocate