

Passport Revocation



Presented to
Northern New Jersey
Working Together
Tax Institute
January 8, 2020



Presented by: E. Martin Davidoff, CPA, Esq.

The Prager Metis Tax Controversy Department

Led By:

 Marty Davidoff & Robbin Caruso





REPRESENTING *the* TAXPAYER FACING PASSPORT REVOCATION


Revocation of Passports!

- Congress Enacted Law in 2015 (§7345)
- IR-2018-7/Notice 2018-01: IRS Advised of Implementation, which started in Feb. 2018
- Applicable to those owing more than \$53,000 in back taxes, penalties & interest (Code defines as over \$50,000 §7345(b)(1)(B) plus adjustments for inflation) for which a Notice of Federal Tax Lien has been issued for which Taxpayer's right to a hearing have been exhausted or lapsed

Revocation of Passports!

- **Revenue Ruling 2019-44 Increased the threshold to \$53,000 effective 1/1/2020.**

IRS Notice 508C - Certification

 Department of the Treasury
Internal Revenue Service
Attn: Passport
P.O. Box 8208
Philadelphia, PA 19101-8208

Notice	CP508C
Notice date	January 30, 2019
Taxpayer ID number	NNN-NN-NNNN
To contact us	Phone 800-829-1040 International: +

Page 1 of 7

BUSINESS NAME
ADDRESS
CITY, STATE ZIP

Notice of certification of your seriously delinquent federal tax debt to the State Department

Amount due: \$97,978.55

On December 4, 2015, as part of the Fixing America's Surface Transportation (FAST) Act, Congress enacted Section 7345 of the Internal Revenue Code, which requires the Internal Revenue Service to notify the State Department of taxpayers certified as owing seriously delinquent tax debt. The FAST Act generally prohibits the State Department from issuing or renewing a passport to a taxpayer with seriously delinquent tax debt.

We have certified to the State Department that your tax debt is seriously delinquent. We show that you still owe \$97,978.55. This amount includes penalty and interest computed to 30 days from the date of this notice.

This notice only includes the portion of your tax debt that has been certified to the State Department as seriously delinquent, as defined below. You may have additional tax debt that is not included in this notice.

Billing Summary	
Amount of seriously delinquent tax debt owed	\$85,099.95
Additional penalty charges	5,000.00
Additional interest charges	7,878.55
Amount due by March 1, 2019	\$97,978.55

What you need to know

Seriously delinquent tax debt is tax debt (including penalties and interest) totaling more than \$52,000* for which:

- We have filed a Notice of Federal Tax Lien and your administrative rights under Internal Revenue Code (IRC) Section 6320 have been exhausted or lapsed, OR
- We have, at any time, issued a levy to collect this debt.

* The \$52,000 threshold is adjusted yearly for inflation.

If you apply for a passport or passport renewal, the State Department will deny your application and will not issue a passport to you or renew your current passport.

If you currently have a valid passport, the State Department may revoke your passport or limit your ability to travel outside the United States.



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Revocation of Passports!

- No Revocation if:
 - Taxpayer is in compliance with an installment agreement or an Offer in Compromise;
 - Debt is currently not collectible due to hardship
 - Debt is suspended during consideration of an innocent spouse claim; or
 - Debt is suspended while a collection due process hearing is pending.

Revocation of Passports!

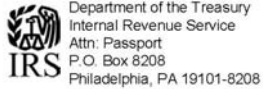
- No Revocation if Taxpayer is:
 - In Bankruptcy;
 - Identified by the IRS as a victim of tax-related identity theft;
 - Serving in a Combat Zone; or
 - Awaiting a decision on a request for an instalment agreement or a good faith OIC submission.

IRS will Reverse Certification if any of the conditions exist on this or previous slide.

Revocation of Passports!

- Notices of Liens and Notices of Intent to Levy must include a warning about the possibility of loss of one's passport.
- Code Sec. 6103(k)(11) authorizes the IRS to share information with the Secretary of State for this purpose.

IRS Notice 508R - Reversal



Notice	CP508R
Notice date	January 30, 2017
Taxpayer ID number	XXX-XX-NNNN
To contact us	Phone: 1-855-XXX-XXXX International: 1-267-XXX-XXXX
Page 1 of 1	XXXX

TAXPAYER NAME
123 N HARRIS ST
HARVARD, TX 12345

Reversal of notice of certification of your seriously delinquent federal tax debt to the State Department

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The IRS previously notified the State Department that you were certified as owing seriously delinquent tax debt. Your certification has been reversed. As required by the FAST Act, we've notified the State Department of the reversal of your certification.

What you need to know

- As a result of the IRS notification, the State Department is no longer required to deny your application for a passport or passport renewal and cannot revoke your current passport because you owe tax.
- The State Department may, however, deny your passport application or revoke your passport for reasons unrelated to your tax debt.
- You don't need to respond to this notice.

Additional information

- Visit www.irs.gov/cp508r
- Visit www.irs.gov/passports for more information about why we reverse certifications of seriously delinquent tax debt or the timing of the reversal.
- Keep this letter for your records.

If you need assistance, please don't hesitate to contact us.



IRS Notice 508R – Reversal

Key Language

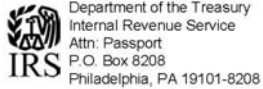
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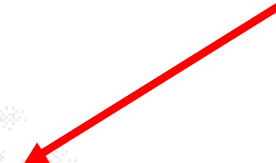
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Revocation of Passports!

- IRS will also, generally, reverse certifications if:
 - All paperwork for offer in compromise or any other collection alternatives has been submitted.

The rationale is that the Taxpayer has taken all the steps that the Taxpayer could take to resolve his/her tax debt and, accordingly, Taxpayer is merely awaiting an IRS decision. There is nothing more the Taxpayer can do at this point.

Revocation of Passports!

Essentially, if you are dealing with your tax debt or have dealt with it, Revocation of your passport would be highly irregular.

IRS Phone Number to reverse certification if you have dealt with your issue:

1-855-519-4965 (Confirmed 11/5/19)

IRS Commentary:

Three Keys to Success in Collection Matters

- Keep Current
- Make Financial Disclosure
- Present a Plan

If you take the actions above, you are “dealing” your tax debt and Passport Revocation should not be an issue.



Revocation of Passports!

The Process

- IRS provides a certification to the State Department of a “seriously delinquent tax debt” and must provide Taxpayer with contemporaneous notification. (Notice 508C)
- State Department will deny new applications for passports or renewal; and may revoke or limit previously-issued passports.

Revocation of Passports!

The Process

- IRS may reverse previous certifications to the State Department if circumstances change.
- IRC §7345(e) provides right to judicial review.
- No Administrative Appeal available to the IRS Office of Appeals.

What has been your experience?

Revocation of Passports!

Taxpayer Advocate Blog of 9/3/19:

- IRS to ***temporarily*** exclude taxpayers with open TAS cases from passport certification.
- IRS will reverse certifications for those who open TAS cases after certifications.

This effectively protects taxpayers who are working with TAS to resolve their liabilities from the severe consequences of passport denials and revocations.

Taxpayers must work with TAS in good faith.

Revocation of Passports!

What the IRS Giveth,

It can Take Away

...and so it has.

Revocation of Passports!

- IRS revokes TAS policy on October 16, 2019 stating:

“... the IRS has determined that a blanket, systemic exception for anyone with an open TAS case is overly broad and could undermine the effectiveness of the statute enacted by Congress in the FAST Act to collect a seriously delinquent tax debt.”

See: <https://www.irs.gov/newsroom/update-on-passport-certifications-and-taxpayer-advocate-service>

Revocation of Passports!

*Until Recently, “REVOCATION OF PASSPORTS”
simply meant
NON-RENEWAL OF PASSPORTS
in most instances.*

*But as of July, 2019, Revocation becomes an
issue.*

Revocation of Passports!

July 12, 2019 Update – IRM 5.1.12.27.1

- New process for IRS to Request U.S. Department of State to revoke one's passport;
- IRS Letter will 6152 be issued 30 days (90 days if outside the US) prior to making request to State Department.
- Can only be issued by Headquarters Collection.
- The Taxpayer Advocate finds the language vague regarding the circumstances of revocation, as does TIGTA.

Revocation of Passports!

IRM 5.1.12.27.1 Circumstances of Revocation

- To protect the integrity of the legislation (e.g., such as when a taxpayer obtains a decertification based on a promise to pay, and fails to act as agreed).
- If revocation is needed to encourage payment of the tax by incentivizing taxpayers with offshore activities or interests to resolve their liabilities.
- In other instances where the facts and circumstances indicate that revocation would facilitate payment of tax.

Revocation of Passports!

IRM 5.1.12.27.1 Circumstances of Revocation

- ***IRS Commentary on how this IRM Section will be applied.***

TIGTA Report –September 19, 2019

Reference #: 2019-30-068

- 306,988 “certified” taxpayers as of 12/20/18.
- 1,814 CSED was prior to Certification.*
- 21.6% of statistical sample were beneath the dollar threshold.
- 68,764 “decertified” as of 12/20/18.
- 4 incorrectly decertified.
- As of 12/20/18, IRS had not yet started certifications of complex debt, only simple tax debt.

* This issues has did not occur subsequent to October, 2018.

TIGTA Report –September 19, 2019

Reference #: 2019-30-068

- The IRS considers complex debt to be when the aggregate debt consists of varied filing statuses on different tax modules with an outstanding tax liability. Changing in Filing Status (Married to Single and visa versa) over two or more years is a primary example of such complex debt.
- As of March 22, 2019, the IRS estimated that 69,460 taxpayers had complex debt that meets the requirements for certification. The IRS has developed programming to identify these taxpayers with complex debt. The IRS expects to begin sending these taxpayers to the State Department for certification, using a phased approach, by September 2019.

TIGTA Report –September 19, 2019

Reference #: 2019-30-068

According to the Passport Program office, as of May 17, 2019:

388,701 taxpayers have been certified as having seriously delinquent tax debt. Since these certifications, \$961 million has been credited to taxpayer accounts and, of this amount, \$550.7 million is the result of full paid balances. As of this date, there are still 264,306 currently certified taxpayers who owe \$49.4 billion in tax liabilities.

TIGTA Report –September 19, 2019

Reference #: 2019-30-068

According to the Passport Program office, as of May 17, 2019:

- 99,867 taxpayers have been decertified. Of those decertifications, 40,062 (40 percent) are due to taxpayers either becoming or working towards being tax compliant.

Reasons for Decertification as of 5/17/19

Decertification Reason	Number of Taxpayers	Percentage of Decertifications
Pending Installment Agreement	18,516	19%
Installment Agreement	8,596	9%
Full Paid	6,815	7%
Pending Offer in Compromise	5,887	6%
Pending Full Pay Adjustment	224	<1%
Accepted Offer in Compromise	24	<1%
Total of Compliant Taxpayers	40,062	40%

Reasons for Decertification as of 5/17/19

Decertification Reason	Number of Taxpayers	Percentage of Decertifications
Disaster Zone	27,137	27%
CSED Expiration	11,507	12%
Currently Not Collectible Hardship	8,716	9%
Bankruptcy	3,597	4%
Deceased taxpayer	2,696	3%
CDP Hearing	2,262	2%
Identity Theft	1,663	2%
Threshold ¹⁸	1,045	1%
Manual Block/Other	472	<1%
Innocent Spouse	438	<1%
Erroneous Decertification	244	<1%
Combat Zone	28	<1%
Total of Noncompliant Taxpayers	59,805	60%
Total of All Decertifications	99,867	100%

Source: Passport Program Office.

Court Challenge

Authorized by 7345(e) to Determine whether:

- “the certification was erroneous” or
- “the Commissioner has failed to reverse a certification”

The Relief to be granted is for the Court to order the IRS to notify the Secretary of State that the notification being challenged was erroneous.

Court Challenge

Relief may be sought against the Commissioner in Tax Court or in a U.S. District Court.

The Court first acquiring jurisdiction over such an action will then have sole jurisdiction.*

*Per Code Sec. 7345(e)(1) as amended by the Tax Technical Corrections Act of 2018 (P.L. 115-141).

Court Challenge

- Opportunity for Forum Shopping:
- Appeals of Tax Court will go to D.C. Circuit (see Procedurally Taxing post of April 26, 2018 by Carlton Smith)
- Appeals of District Court will go to Circuit based upon Taxpayer's residence.

Non-Litigation Remedies

No Remedy through IRS Appeals

Working within the IRS

Taxpayer Advocate Service (“TAS”)

Tax Court Challenge

Revised Petition Form 2

PETITION

1. Please check the appropriate box(es) to show which IRS ACTION(s) you dispute:

- | | |
|---|--|
| <input type="checkbox"/> Notice of Deficiency | <input type="checkbox"/> Notice of Determination Concerning Relief From Joint and Several Liability Under Section 6015 (or Failure of IRS to Make Determination Within 6 Months After Election or Request for Relief)* |
| <input type="checkbox"/> Notice of Determination Concerning Collection Action | <input type="checkbox"/> Notice of Certification of Your Seriously Delinquent Federal Tax Debt to the Department of State |
| <input type="checkbox"/> Notice of Final Determination for [Full/Partial] Disallowance of Interest Abatement Claim (or Failure of IRS to Make Final Determination Within 180 Days After Claim for Abatement)* | <input type="checkbox"/> Notice of Determination Under Section 7623 Concerning Whistleblower Action* |
| <input type="checkbox"/> Notice of Determination of Worker Classification* | |

*For additional information, please see "Taxpayer Information: Starting a Case" at www.ustaxcourt.gov (accessible by hyperlink from asterisks above, or in the Court's information booklet).

Tax Court Challenge

Tax Court details are not being covered today. See materials for:

- **Tax Court Rules;**
- **References to IRS Website; and**
- **Procedurally Taxing.**

Revocation of Passports!

- ***QUESTIONS?***



Want to know more?



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SFIELDS@PRAGERMETIS.COM



Tax Court Challenge

New Rules Title XXXIV

- “Certification and Failure to Reverse Certification Action with Respect to Passports”
- Supplemental Rules Effective 11/30/2018 (See Notice_113018 on US Tax Court Website under Rules)
- Rules 350 through 354
- Many of the rules are effective as to Passport certification actions commenced with respect to notices of certification issues under Code section 7345(d) after December 4, 2015.

Tax Court Challenge

Rule 350. General

(a) Applicability: The Rules of this Title XXXIV set forth the provisions that apply to a certification or a failure to reverse a certification action under Code section 7345(e). Except as otherwise provided in this Title, the other Rules of Practice and Procedure of the Court, to the extent pertinent, are applicable to the action.

Tax Court Challenge

Rule 350. General

(b) Jurisdiction: The Court shall have jurisdiction of an action to determine whether the certification was erroneous or whether the Commissioner failed to reverse the certification under Code section 7345(e) when the conditions of that section are satisfied.

Tax Court Challenge

Rule 351. Commencement of Action

(a) Commencement of Action: A certification action under Code section 7345(e) shall be commenced by filing a petition with the Court. See Rule 20, relating to commencement of case; Rule 22, relating to the place and manner of filing the petition; and Rule 32, regarding the form of pleadings.

Tax Court Challenge

Rule 351(b) – Content of Petition

A petition filed pursuant to this Rule shall be entitled

“Petition for Certification or Failure to Reverse Certification Action Under Code Section 7345(e)”

and shall contain the following:

Tax Court Challenge

Rule 351(b) – Content of Petition

- (1) The petitioner's name, State of legal residence, and mailing address, stated as of the date that the petition is filed.
- (2) The date of the notification of the certification under Code section 7345(d).
- (3) Lettered statements explaining why the petitioner disagrees with the certification or the failure to reverse the certification.

Tax Court Challenge

Rule 351(b) – Content of Petition

(4) Lettered statements setting forth the facts upon which the petitioner relies to support the petitioner's position.

(5) A prayer setting forth the relief sought by the petitioner.

(6) The signature, mailing address, and telephone number of the petitioner or each petitioner's counsel, as well as counsel's Tax Court bar number.

Tax Court Challenge

Rule 351(b) – Content of Petition

(7) As an attachment, a copy of the notification of the certification under Code section 7345(d).

Rule 351(c) provides for a filing fee of \$60 which may be waived for those who cannot afford it.

Tax Court Challenge

Rule 352. Request for Place of Trial

At the time of filing a petition for a certification or a failure to reverse a certification action under Code section 7345(e), a request for place of trial shall be filed in accordance with Rule 140.

Tax Court Challenge

Rule 353. Other Pleadings

(a) Answer: The Commissioner shall file an answer or shall move with respect to the petition within the periods specified in and in accordance with the provisions of Rule 36.

(b) Reply: For provisions relating to the filing of a reply, see Rule 37.

Tax Court Challenge

Rule 354. Joinder of Issue in Certification Action

A certification or a failure to reverse a certification action under Code section 7345(e) shall be deemed at issue as provided by Rule 38.

Tax Court Challenge

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Tax Court Challenge

When to File?

Per Chief Counsel Notice CC-2018-005:

Six Years from date of Certification.

This is a catchall federal judicial deadline pursuant to U.S.C. section 2401(a)

Tax Court Challenge

Standard of Review

Whether the IRS action or lack thereof was arbitrary, capricious, an absence of discretion or otherwise not in accordance with law.

Taxpayers cannot challenge the underlying liability in Passport Revocation actions.

Has anyone litigated such a case?

Tax Court Challenge

As of early October, there are 18 pending passport cases in the Tax Court, according to Keith Fogg of Procedurally Taxing.

Judge Marvel indicated that we might see the first opinion in a passport case soon.

- April 24, 2018 - Post on Procedurally Taxing by Keith Fogg: Chief Counsel Guidance on Passport Denials and Recent Legislative Change
- <http://procedurallytaxing.com/chief-counsel-guidance-on-passport-denials-and-recent-legislative-change/>

Procedurally Taxing

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ABOUT THE BLOG

Chief Counsel Guidance on Passport Denials and Recent Legislative Change

 April 24, 2018 by [Keith Fogg](#)  [3 Comments](#)

On April 5, 2018, the IRS issued [CC-2018-005](#) providing guidance to Chief Counsel attorneys regarding how to handle IRC [7345](#) cases brought in Tax Court. We reported in a prior [post](#) that Deputy Chief Counsel Drita Tunuzi stated at the last ABA Tax Section meeting that the IRS would probably start issuing the notices by the end of February. The timing of this guidance syncs with the timing of the earliest Tax Court cases Chief Counsel’s office might expect based on the issuance of the revocation notices. We are unaware of any pending cases on this issue and welcome comments directing us to filings under this new provision of the code. In addition to discussing the recent guidance, I have copied below, thanks to an alert from Carl Smith, the language of a small amendment to jurisdiction of these cases.



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- <https://www.irs.gov/businesses/small-businesses-self-employed/revocation-or-denial-of-passport-in-case-of-certain-unpaid-taxes>

File	Pay	Refunds	Credits & Deductions	Forms & Instructions
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Home > File > **Businesses and Self-Employed** > **Small Business and Self-Employed** > Revocation or Denial of Passport in Case of Certain Unpaid Taxes

Revocation or Denial of Passport in Case of Certain Unpaid Taxes

English

Individuals


International Taxpayers

Businesses and Self-Employed

Small Business and Self-Employed

- Employer ID Numbers
- Business Taxes
- Reporting Information Returns
- Self-Employed
- Starting a Business
- Operating a Business
- Closing a Business
- Industries/Professions

Alert

 The IRS began sending certifications of unpaid tax debt to the State Department in February 2018. The content presented here is for informational purposes only.

If you have seriously delinquent tax debt, IRC § 7345 authorizes the IRS to certify that debt to the State Department for action. The State Department generally will not issue a passport to you after receiving certification from the IRS.

- [Certification of Individuals With Seriously Delinquent Tax Debt](#)
- [Annual Adjustment for Inflation](#)
- [Taxpayer Notification - Notice CP 508C](#)
- [Reversal of Certification - Notice CP 508R](#)
- [Judicial Review of Certification](#)
- [Payment of Taxes](#)
- [Passport Status](#)
- [Travel](#)

Upon receiving certification, the State Department shall deny your passport application and/or may revoke your current passport. If your passport application is denied or your passport revoked and you are overseas, the State Department may issue you a limited validity passport good only for direct return to the United States.

Related Topics

- [Payment Plans Installment Agreements](#)
- [Offer in Compromise](#)
- [Collection Due Process \(CDP\)](#)
- [Tax Information for Innocent Spouses](#)