

## Tax Scofflaws, Going Nowhere FAST

By Eric L. Morgenthal

In their pursuit of tax debtors, the IRS recognizes that the chase shouldn't end at the border. And to contain those fleeing the country, they have several tools at their disposal. The *Writ Ne Exeat Republica* is a collection device detaining a U.S. taxpayer who is about to leave and had transferred assets abroad to avoid IRS enforced collection. In addition, the Treasury Enforcement Communication System (TECS) is maintained by the Department of Homeland Security to identify non-compliant taxpayers seeking to enter or leave the U.S. But recently, the U.S. international tax enforcement system has extended its reach of administration even further.

In December 2015, Congress passed the Fixing America's Surface Transportation Act. This act codified the authority of the IRS in new IRC section 7345 to trigger the "revocation or denial of a passport in case of certain tax delinquencies" which exceed \$51,000 of combined tax, penalties and interest (indexed for inflation), also known as a "seriously delinquent tax debt." And although in the statute for nearly two years, the IRS

has recently announced their intent to commence enforcement. To initiate the passport revocation, the IRS must first have filed a Notice of Tax lien and allowed all Collection Due Process hearing rights to lapse or levied against the taxpayer. Unfortunately, having a case open before the Taxpayer Advocate was not delineated in the statute as an available right that suspends enforcement under IRC section 7345.

To many, this approach to accelerate tax collection is not new. Under a similar New York State Department of Taxation provision, debtors may have their driver's license suspended until their deficient tax balances are addressed and/or paid. But this new federal measure is far more powerful. It doesn't merely restrict the means of travel but the right to travel entirely.

Pursuant to IRC section 7345, the IRS must notify the taxpayer in writing when they have certified a seriously delinquent tax debt to the State Department via formal Notice CP 508C. This leaves the taxpayer with 90 days to con-



Eric L. Morgenthal

tact the IRS about the notice and address the matter. In that time, the taxpayer can extinguish the debt or demonstrate that it was no longer enforceable. In the alternate, the tax debt will be considered no longer seriously delinquent if certain safe harbors are met.

These include: if an installment plan or offer-in-compromise is established, the Department of Justice enters into a settlement agreement, collection is suspended under innocent spouse provisions or an adjustment is pending which will eliminate the tax balance owed. However, as pointed out by the Taxpayer Advocate, the IRS notice "lacks any language about other situations where tax debts may be excluded from the program, such as if the taxpayer is a victim of identity theft or qualifies for currently not collectible hardship circumstances" and instead, the agency placed that information on its website.

If the taxpayer is successful in reaching an arrangement with the IRS, a Reversal of Certification is provided via Notice CP 508R within 30 days. If denied the only recourse available is judi-

cial intervention through an action in either Federal District Court or U.S. Tax Court to request decertification. Note that IRS administrative remedies such as a CDP hearing cannot instead be used to challenge the debt as "Seriously Delinquent." Furthermore, the IRS has explicitly stated that merely paying the debt to below the \$51,000 threshold won't bring reversal.

As indicated by the IRS, a seriously delinquent tax debt is limited to liabilities incurred under Title 26 of the United States Code and does not include FBAR ("Foreign Bank Account Report") Penalties or Child Support. However, many items reportable under the Foreign Account Tax Compliance Act (FATCA) in Title 26 align with the FBAR reporting system can thus still cause a travel nightmare for taxpayers with those foreign compliance issues as well.

The most feared aspect of the program would arise in the event that international emergency travel is needed. As asserted by the Taxpayer Advocate, IRS Notice CP 508C fails to inform taxpayers that an exception for emergency or humanitarian circumstances could be provided but that the taxpayer would

(Continued on page 23)

**FOCUS ON**  
**TAX**  
SPECIAL EDITION

### Tax Scofflaws, Going Nowhere FAST (Continued from page 8)

need to contact the Department of State directly for consideration. However, unknowing tax debtors with only an IRS Notice CP 508C in hand may find themselves calling the phone number on the notice itself seeking a remedy that the IRS is not empowered to provide.

As with any IRS program, there are additional rules and exceptions. In fact, the IRS even states in the Internal Revenue Manual that the "discretionary exclusion categories are subject to change in the future." There are also constitutional arguments against this mode of enforcement yet

to be tested in the courts. But until the dust settles, tax debtors, with hopes of international travel will be going nowhere FAST.

*Note: Eric L. Morgenthal, Esq., CPA, M.S. (Taxation) maintains his tax law practice in Melville, New York, specializing in International, Federal and New York State tax controversy matters. Mr. Morgenthal is currently the SCBA Taxation Law Committee Co-Chair and formerly served as New York Chapter President of the American Association of Attorney-CPA's.*