United States: IRS will soon enforce a new law that requires the denial or revocation of passports if certain taxes are unpaid

March 7, 2017

In brief

The Internal Revenue Service (IRS) website states that it will begin enforcing a new law in early 2017 that could result in the US State Department revoking, limiting, or refusing to renew a US passport for travelers with 'seriously delinquent tax debt.' The IRS will make the determination of whether a person has such federal tax debt and then send a certification to the State Department. The threshold for when a person has seriously delinquent tax debt is relatively high – in general, when the government has issued either a notice of federal lien or a levy and the amount owed is more than $50,000.

Mobility professionals should await an official notification from the IRS as to when they have processes in place and will be enforcing this new law. In the meantime, they may consider reviewing or developing procedures to review their mobile populations that include US citizens to determine whether any employees could be potentially subject to this new process.

In detail

New tax enforcement process could impact employee mobility

Congress enacted a new enforcement provision in 2015 that could curtail a US citizen's ability to freely travel in and out of the United States if that person has seriously delinquent federal tax debt over $50,000. New Section 7345 authorizes the IRS to send a certification to the US State Department regarding a particular individual, giving the State Department the ability to:

- revoke a US passport
- prior to revocation, limit the passport to return travel to the United States or issue a limited passport that only permits return travel to the United States
- refusal to issue or renew a US passport.

The State Department will provide a 90-day window before denying a passport for the individual to correct the situation, i.e., make full payment of the tax debt, enter into an alternative payment arrangement with the IRS, or resolve any erroneous certification issues. However, the State Department will not give any grace periods before it revokes a passport.

The IRS must notify the individual in writing by regular mail at the time they make a certification to the State Department and the State Department must provide written notification as well if a US passport application is denied or US passport is revoked.

'Seriously delinquent tax debt' – what must occur to reach this status?

This enforcement action is only triggered if a US federal tax debt rises to the level of 'seriously delinquent tax debt.' This means an individual's unpaid, legally enforceable federal tax debt in which:

- a notice of federal lien has been filed by the government, and certain administrative remedies have lapsed or been exhausted, or
- a levy has been issued by the government.

Having unpaid US federal taxes is not enough to qualify – the IRS must go through various formal steps (e.g., issuing a notice of deficiency) before tax debt rises to this level.

However, even if this is the case, US tax debt will not be taken into account if certain tax payment processes are underway, including debt:

- that is being paid in a timely manner under an IRS installment agreement, under an offer in compromise accepted by the IRS, or a settlement agreement entered into with the Justice Department
- for which a collection due process hearing is timely requested, or
- if collection is suspended due to a request for innocent spouse relief.

'Seriously delinquent tax debt' must total more than $50,000 in order for this enforcement action to apply. This includes the federal tax debt itself (no state and local taxes), as well as applicable interest and penalties. This $50,000 threshold applies for the 2016 tax year and will be indexed for inflation thereafter.

Reversal of certification by the IRS

The IRS will reverse its certification when the tax debt is fully satisfied or becomes legally unenforceable, as well as if the certification is determined to be erroneous.

The certification will also be reversed if the debt is no longer seriously delinquent. Examples include where the individual enters into an installment agreement with the IRS (allowing payment over time) or the IRS accepts an offer in compromise to satisfy the debt. However, the IRS specifically states on its website that it will not reverse the certification if the individual simply makes a partial payment to bring the debt below the $50,000 threshold.

The takeaway

This new enforcement action appears to encourage individual taxpayers to be in compliance with their tax debts before availing themselves of the privilege of travelling with a US passport. US citizens carrying US passports, in particular, are the focus of this new process – green card holders do not carry a US passport. Although we understand that the IRS is currently not certifying any such taxpayers now, their website states that certifications to the State Department are slated to begin sometime in early 2017.

IRS must work through internal processes

A critical question is how the IRS will track and identify individuals who have tax debt that satisfies the criteria of 'seriously delinquent tax debt'. The IRS will need to work out internal processes to do so – this could be challenging given that there are many IRS systems that track the current status of balances due. The process will also need to take into account delays in posting payments.

Potential actions for mobility programs

Mobility programs should await further guidance from the IRS as to when enforcement will start, i.e., when they will start making certifications to the State Department. A formal announcement is likely to occur. In anticipation, employers should consider reviewing their mobile populations to determine whether any employees could either have seriously delinquent US tax debt, or are close to satisfying the criteria where the loss or limitation of passport rights could be detrimental to the enterprise.

Mobility professionals may also want to communicate this forthcoming enforcement process to mobile employees so they are not surprised if this new enforcement action impacts their situation. Mobility policies may also need to be modified, for example, adding a requirement that employees must have a US passport in good standing given this new law in order to take advantage of a mobility opportunity.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact your regular Global Mobility Services engagement team or one of the following team members:

Global Mobility Services – United States

Peter Clarke, *Global Leader*
+1 (203) 539-3826
peter.clarke@pwc.com

Al Giardina
+1 (203) 539-4051
alfred.giardina@pwc.com

Derek Nash
+1 (202) 414-1702
derek.m.nash@pwc.com

Clarissa Cole
+1 (213) 217-3164
clarissa.cole@pwc.com

Stay current and connected. Our timely news insights, periodicals, thought leadership, and webcasts help you anticipate and adapt in today's evolving business environment. Subscribe or manage your subscriptions at:

pwc.com/us/subscriptions