IRS Starts Depriving Tax Debtors of Passports in 2018: New Guidance About Code Sec. 7345 and Future Tax Court Disputes

*By Hale E. Sheppard**

Hale E. Sheppard analyzes the reasons why Congress decided to use passports to "encourage" tax payments, the functioning of Code Sec. 7345 and the new guidance issued by the IRS, just as the first batch of taxpayers are receiving notices that they have lost their ability to travel internationally.

I. Introduction

After several false starts, the IRS finally began implementing in January 2018 the new passport-denial-and-revocation program for certain U.S. tax debtors. The ability to restrict international travel as leverage to collect taxes derives from Code Sec. 7345, a tax provision enacted by Congress way back in December 2015, as part of the Fixing America's Surface Transportation ("FAST") Act.[1] Generally, Code Sec. 7345 authorizes the IRS, with the assistance of the U.S. State Department, to revoke passport privileges of those taxpayers with a seriously delinquent tax debt ("SDTD"). Depriving taxpayers of the ability to travel abroad for pleasure, family, business, or other reasons will surely get their attention. It likely will result in significant litigation against the IRS, too.

Notwithstanding the pervasiveness and importance of this issue, the IRS has issued relatively little public guidance since Code Sec. 7345 was passed. There have been no proposed or temporary regulations, and no detailed Revenue Procedures. This has left taxpayers and their advisors, at least until very recently, with

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only the statutory language of Code Sec. 7345, a modest amount of legislative history, and information posted (and periodically changed) by the IRS on its website. In December 2017, the IRS inserted valuable information in its Internal Revenue Manual, and, in January 2018, issued Notice 2018-1.

This article analyzes the reasons why Congress decided to use passports to "encourage" tax payments, the functioning of Code Sec. 7345, a long list of initial uncertainties identified by the tax community, avenues for taxpayers to avoid or rectify SDTD status, and the new IRS guidance announced in late 2017 and early 2018, just as the first batch of taxpayers are receiving notices that they have lost their ability to travel internationally.

II. Reasons for Leveraging Passports for Tax Payments

The idea of depriving a tax debtor of a U.S. passport is not new, but renewed focus on this possibility was triggered by a Government Accountability Office ("GAO") report in 2011.[2]

The GAO report began by pointing out that the "tax gap" was, and continues to be, huge. Indeed, as of September 2010, the total unpaid tax liability was $330 billion, and the GAO cautioned that this figure is significantly understated because the IRS only has partial data. The "tax gap" has three elements: (i) the non-filing gap, which is made up of taxpayers who do not file Forms 1040 and do not pay income taxes; (ii) the underreporting gap, comprised of taxpayers who file Forms 1040 but understate the full amount of tax due; and (iii) the underpayment gap, into which fall those taxpayers who file accurate Forms 1040 but simply fail to pay the corresponding tax liability. The estimated "tax gap" of $330 billion was based solely on the underpayment gap, because the IRS is unable to realistically track the non-filing gap and the underreporting gap.[3] Given the magnitude of the "tax gap" and the many challenges that the IRS faces in collecting unpaid taxes, certain congressional committees asked the GAO to determine the amount of unpaid federal taxes by individuals to whom the State Department issued a passport in 2008 and to provide specific examples of these types of individuals.[4]

The GAO report clarified that, while the governing law at the time did not authorize the State Department to deny or revoke passports to individuals with unpaid taxes, it permitted such actions in a variety of other circumstances. These included, but were not limited to, instances when an individual (i) is subject to a criminal court order, probation, or parole that forbids departure from the United States; (ii) owes more than $2,500 in child support; (iii) has certain debts with the State Department; (iv) has an outstanding felony warrant; (v) is subject to an extradition request; (vi) has been declared legally incompetent; or (vii) used a passport to cross a border and commit certain drug-trafficking crimes or sex-tourism crimes, and is imprisoned, on parole, or on supervised release in connection with such crimes.[5]

With respect to the scope of the problem, the GAO report indicated that, as of September 2008 (*i.e.*, only three quarters of the one year being studied), the State Department issued passports to more than 224,000 individuals who collectively owed the IRS over $5.8 billion in federal taxes.[6] As with the estimate of the total "tax gap" of $330 billion, the GAO emphasized that the $5.8 billion was seriously understated because (i) the analysis did not cover all of 2008, (ii) the IRS can only gauge the underpayment gap, not the non-filing gap or the underreporting gap, (iii) it was impossible for the GAO to properly identify all tax debtors because existing law did not permit the State Department to deny a passport solely because a taxpayer lacked a Social Security Number ("SSN"), and (iv) the general collection period for a federal tax debt is 10 years from assessment, such that the debt disappears from the records after that time.[7] The GAO report summarized the shortfall in the following manner: "[T]he amount of tax debt for individuals currently holding U.S. passports may be in multiples of our $5.8 billion estimate for fiscal year 2008."[8]

The GAO report also described certain individuals who were granted passports in 2008, despite their unwillingness or inability to pay their tax debts. It identified a list of individuals who were involved in abusive and possibly criminal activity related to the U.S. tax system.[9] The GAO report noted the following discoveries from its investigation: At least 14 passport recipients did not file Forms 1040 for one or more years; the IRS had filed a notice of federal tax lien ("NFTL") against the property of at least 20 passport recipients; and 10 or more passport recipients had been indicted or convicted of violating federal laws (for distribution of controlled substances, making false statements to the U.S. government, committing bank fraud, engaging in money laundering, *etc.*).[10]

The GAO report ultimately concluded that, in order for the IRS to have a chance at collecting a larger portion of unpaid taxes, Congress should consider enacting new legislation using U.S. passports as leverage:

> Federal law already allows the linkage of debt collection with the passport issuance process in certain areas,

including for certain outstanding State Department debt and child support enforcement. The question is whether this is a public policy strategy that might have broader application in other areas, such as federal tax debt. If so, legislation would be needed to facilitate screening for outstanding federal tax liability with linkage to the passport issuance process. Such legislation could have the potential to help generate substantial collections of known unpaid federal taxes and increase tax compliance for tens of millions of Americans holding passports. Appropriate criteria and safeguards would need to be developed and applied, such as to ensure individual privacy, minimize undue approval delays, and permit appropriate exemptions.[11]

III. Analysis of the Relevant Tax Provisions

Most taxpayers and practitioners center their attention on Code Sec. 7345, which is logical because it is the tax provision that gives the IRS, in coordination with the State Department, the power to deprive a tax debtor of a U.S. passport. Equally important, though less well known, are the other changes introduced by the FAST Act. All relevant provisions are examined below.

A. The Main Tax Provision—Code Sec. 7345

1. General Rule

Code Sec. 7345(a) contains the following general rule:

> If the Secretary [of the Treasury] receives certification by the [IRS Commissioner] that an individual has a [SDTD], the Secretary [of the Treasury] shall transmit such certification to the Secretary of State for action with respect to denial, revocation, or limitation of a passport pursuant to the … FAST Act.

In plainer English, the general rule is that, if the IRS determines that an individual taxpayer has an SDTD, then it will send a "certification" to the Secretary of the Treasury, who, in turn, will send the "certification" to the Secretary of State, who then will deny, revoke, or limit the U.S. passport of the individual, as appropriate.

2. Definition of SDTD

The term SDTD generally means (i) a federal tax liability, (ii) which has been assessed, (iii) which remains unpaid, (iv) which is more than $50,000, and (v) with respect to which either the IRS has filed an NFTL and the administrative rights under Code Sec. 6320, including the right to request a Collection Due Process ("CDP") hearing, have been exhausted or lapsed, or the IRS has levied.[12] The key amount, $50,000, is subject to change. It will be increased annually for inflation and rounded to the nearest multiple of $1,000.[13]

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There are a number of so-called "statutory exclusions" from the definition of SDTD. The following types of tax debts are *not* considered SDTDs: (i) a debt that the taxpayer is paying in a timely manner pursuant to an Installment Agreement under Code Sec. 6159; (ii) a debt that the taxpayer is paying in a timely manner pursuant to an Offer-in-Compromise under Code Sec. 7122; (iii) a debt with respect to which the IRS has suspended collection activity because the taxpayer filed a proper request for a CDP hearing and such hearing is still pending; (iv) a debt of an individual who has elected innocent spouse relief under Code Sec. 6015(b) or Code Sec. 6015(c); and (v) a debt of an individual has requested innocent spouse relief under Code Sec. 6015(f).[14]

3. Decertification of SDTD Status

SDTD status is not necessarily permanent; the law allows for reversal of the SDTD certification in certain situations, which some refer to as "decertification." The IRS must notify the State Department in three circumstances: (i) if any certification is found to be erroneous; (ii) if the individual "fully satisfies" the debt that triggered the certification; or (iii) if the debt is no longer an SDTD as a result of Code Sec. 7345(b)(2), as described in the preceding paragraph.[15] In other words, notice of "decertification" must occur when the original certification was unwarranted, the individual completely pays off the SDTD, the individual enters into an Installment Agreement, the individual resolves matters through an Offer-in-Compromise, or the individual has properly sought innocent spouse relief from the liability.[16]

Given the importance of ridding SDTD status swiftly, Congress provided details about how quickly the decertification process must occur. It decided that the appropriate timeframe would be dictated by the grounds on which the decertification is carried out. There are three different standards here. In cases involving erroneous certifications, the IRS must notify the Secretary of the Treasury "as soon as practicable" after discovering the problem. For situations where the taxpayer fully pays the SDTD or it becomes legally unenforceable (presumably because of the expiration of the 10-year collection period), the IRS is obligated to notify no later than the date by which a "Certificate of Release" must be issued for the related NFTL. The IRS needs to notify no more than 30 days after an Installment Agreement or Offer-in-Compromise is accepted by the IRS, if the taxpayer resolves matters through one of these payment alternatives. Finally, when a taxpayer applies for innocent spouse relief or equitable relief under Code Sec. 6015, the IRS needs to notify no more than 30 days after the application.[17]

4. *Notifying the Taxpayer*

Aside from notifying the Secretary of the Treasury of important events, the IRS is required to inform the taxpayer, too. In particular, he or she must "contemporaneously" notify the taxpayer of any SDTD certification, decertification, and the right (described in "simple and nontechnical terms") to bring a civil suit against the U.S. government, as explained below.[18]

5. *Taxpayer's Ability to Seek Redress*

Things will go wrong, of course, and when this happens, taxpayers have limited judicial relief. After the IRS has notified a taxpayer of the SDTD certification, the taxpayer can initiate a civil action against the U.S. government, either in U.S. District Court or Tax Court, to determine whether the certification was erroneous from the outset, or whether the IRS has failed to properly decertify the taxpayer.[19] From the beginning, the IRS website has explained to taxpayers that their ability to seek judicial review is immediate: "You are not required to file an administrative claim or otherwise contact the IRS to resolve the erroneous certification issue before filing suit in the U.S. Tax Court or a U.S. District Court."[20] In terms of remedies, if the relevant court sides with the taxpayer and rules that the certification was erroneous, it can order the IRS to inform the State Department of this reality.[21] The legislative history makes it clear that this is the sole power of the court, and "[n]o other relief is authorized."[22] The IRS website indicates the same, stating that Code Sec. 7345 "does not provide the court authority to release a lien or levy or award money damages in a suit to determine whether a certification is erroneous."[23]

B. Related Tax Provisions

In addition to creating Code Sec. 7345, the FAST Act also introduced or modified several other tax provisions, most of which are examined below.[24] It is noteworthy that the last three items were not codified, which means that taxpayers and practitioners ordinarily would be unaware of them, unless they were to read the original legislation (*i.e.*, the FAST Act) or its legislative history.

1. *New Warnings Required in Post-Lien Notices*

The FAST Act added new language to Code Sec. 6320, such that the IRS must include in its post-lien notices information to taxpayers about the possibility of passport denial or revocation. The old law generally required the IRS to send the taxpayer a post-lien notice within five days of its filing explaining in "simple and non-technical terms" the amount of the liability, the right to request a CDP hearing and have a conference with the Appeals Office, and the procedures for seeking release of the federal tax lien.[25] Now, the post-lien notice must also include data about "the provisions of Section 7345 relating to the certification of [SDTDs] and the denial, revocation, or limitation of passports of individuals with such debts … "[26]

2. *New Warnings Required in Pre-Levy Notices*

The FAST Act made similar changes to the language in Code Sec. 6331, thereby obligating the IRS to insert in its pre-levy notices information about potential passport issues. Previously, the law demanded that the IRS send the taxpayer a pre-levy notice at least 30 days before the proposed seizure explaining in "simple and non-technical terms" the tax provisions related to levy and sale of property, the right to request a CDP hearing and have a conference with the Appeals Office, the relevant procedures, payment alternatives available to taxpayers that might prevent levy (such as Installment Agreements and Offers-in-Compromise), and standards and procedures concerning the release of NFTLs.[27] The law now requires the IRS to give additional data to taxpayers in the pre-levy notice, *i.e.*, information about "the provisions of Section 7345 relating to the certification of [SDTDs] and the denial, revocation, or limitation of passports of individuals with such debts … "[28]

3. *Liberalizing Ability to Share Tax-Related Data*

The FAST Act expanded Code Sec. 6103(k) in order to allow the IRS to disclose certain tax-related data to the State Department for "tax administration purposes." In particular, the FAST Act added Code Sec. 6103(k)(11)(A), which states that, upon receiving from the IRS an SDTD certification, the Secretary of the Treasury shall disclose to the State Department return information with respect to the relevant taxpayer.[29] Code Sec. 6103(k)(11)(B), also created by the FAST Act, attempts to restrict the use of such information, stating that the State Department can only use the information "for purposes of, and to the extent necessary in, carrying out the requirements" of Code Sec. 7345.[30]

4. Granting Discretion to the State Department

The FAST Act granted some discretion to the State Department in carrying out the mandates under Code Sec. 7345. It states that when the State Department receives an SDTD certification from the IRS it generally cannot issue a passport to the relevant individual. However, exceptions can be made, and thus passports can be issued, in "emergency circumstances" and "for humanitarian reasons."[31]

Similarly, the FAST Act provided that the State Department will outright revoke an existing passport of an individual with an SDTD, but, in cases where the individual is already abroad at the time of the certification, the State Department has the option of (i) limiting an existing passport such that it is valid only for return travel to the United States, or (ii) issuing a limited passport, presumably to those individuals who are abroad when their passport expired, which only permits return travel to the United States.[32]

5. Insulating Government Workers from Liability

The FAST Act expressly lets the Secretary of the Treasury and the Secretary of State (and any of their designees) off the hook for any improper actions taken in reliance on an SDTD certification from the IRS. The new law states that these persons "shall *not* be liable to an individual for any action with respect to a certification by the [IRS Commissioner] under Section 7345."[33]

6. Special Rules for Problems with Social Security Numbers

The FAST Act creates special rules for situations in which an individual does not have an SSN or provides a false SSN. It generally provides that the State Department is authorized to deny a passport application if it is submitted by an individual who lacks an SSN or who "willfully, intentionally, or negligently" included an incorrect or invalid SSN.[34] Notwithstanding this general denial power, the FAST Act states that the State Department can still issue a passport "in emergency circumstances" or "for humanitarian reasons."[35]

Similar rules exist in situations where the State Department discovers after issuing a passport that the SSN provided on the application was incorrect or invalid. In such cases, the State Department can revoke the passport altogether, limit an existing passport only for return travel to the United States, or issue a limited passport that only allows for return travel to the United States.[36]

IV. Initial Questions and Issues as of Early 2017

Every piece of tax legislation triggers questions and uncertainties, and the FAST Act is no exception. The situation was more pronounced here, though, because the IRS has still not issued proposed or temporary regulations describing how the IRS should carry out its obligations under Code Sec. 7345, the IRS did not update its Internal Revenue Manual in any significant manner until December 2017, and the IRS just recently issued Notice 2018-1, in January 2018. The author of this current article wrote a previous one in March 2017. Below is a description of various pending issues as of that time. It serves as a solid base for analyzing, later in this article, the recent guidance provided by the IRS.

A. Does the $50,000 Threshold Include Penalties and Interest?

Code Sec. 7345(b)(1) indicates that an SDTD is a federal tax liability that exceeds $50,000, but it does not clarify the components of the calculation. To find this answer, one must look to the legislative history. The congressional conference report states that an SDTD generally includes any "outstanding debt for federal taxes in excess of $50,000, *including interest and any penalties*," for which a post-lien notice or a pre-levy notice has been filed.[37] Likewise, the legislative history states that an SDTD entails taxes and "interest and any penalties."[38]

B. Are "Assessable Penalties" Part of an SDTD?

Code Sec. 7345(b)(1) explains that an SDTD is a "federal tax liability" greater than $50,000, and the legislative history indicates that this term covers not only the federal income taxes related to Forms 1040 of individual taxpayers but also corresponding penalties and interest. What remains murky is whether "assessable penalties" will be considered part of an SDTD.

The term "assessable penalties" refers to those items found in Code Sec. 6671 through Code Sec. 6725. For its part, Code Sec. 6671(a) expressly states that "assessable penalties" shall be paid by the taxpayer upon notice and demand by the IRS and "shall be assessed and collected in the same manner as taxes." It goes on to clarify that any reference in the Code to the term "tax" shall include "assessable penalties."[39]

Notwithstanding the pervasiveness and importance of this issue, the IRS has issued relatively little public guidance since Code Sec. 7345 was passed in December 2015.

Let's see how this might play out, understanding that Code Sec. 7345 speaks to "federal tax liabilities" and Code Sec. 6671 explicitly states that "assessable penalties" are considered "taxes." Four categories of U.S. persons who are officers, directors, and/or shareholders of certain foreign corporations must file an annual Form 5471 (*Information Return of U.S. Persons with Respect to Certain Foreign Corporations*) with the IRS to report their relationships with the corporations.[40] Form 5471 is filed as an attachment to the person's federal income tax return, which is a Form 1040 for individuals.[41] If a person fails to file a Form 5471, files a late Form 5471, or files a timely but "substantially incomplete" Form 5471, then the IRS may assert a penalty of $10,000 per violation, per year.[42] This penalty increases on a monthly basis, to a maximum of $50,000 per violation, if the problem persists after notification by the IRS.[43] To make matters worse for taxpayers, the IRS has been *automatically* imposing Form 5471 penalties for several years. Since 2009, if a tax return is filed after the deadline and Forms 5471 are attached, then the IRS automatically assesses a $10,000 per-violation penalty and starts the collection process.[44] This is true regardless of whether the taxpayer includes an eloquent, detailed, and persuasive statement of "reasonable cause" with the late Form 5471.[45]

Because the Form 5471 penalty is $10,000 per violation, and because it is not uncommon for sophisticated individuals to be required to file multiple Forms 5471 per year, a non-compliant individual could find himself facing Form 5471 penalties in excess of $50,000 very quickly, even if such individual does not have any federal income tax liabilities related to the foreign corporations. It is unclear whether unpaid "assessable penalties," alone, could trigger an SDTD certification and thus deprive an individual of a passport under Code Sec. 7345.

C. Is the $50,000 an Aggregate or Annual Figure?

While Code Sec. 7345(b)(1) states that the SDTD threshold is $50,000, it does not specify whether (i) this is an aggregate figure, such that the IRS can total all outstanding taxes, penalties, and interest for all years and issue a certification if the amount exceeds $50,000, or (ii) this is an annual figure, meaning that the IRS must determine this on a year-by-year basis and send a certification only if the liability for a particular year exceeds $50,000.[46]

D. Can Partial Payment Avoid SDTD Status?

As indicated above, Code Sec. 7345(c)(1) explains that the IRS must notify the State Department if any certification is later found to be erroneous, if the individual taxpayer "fully satisfies" the debt that triggered the certification, or the debt is no longer an SDTD as a result of one of the exceptions found in Code Sec. 7345(b)(2). Despite this language, uncertainty remained, and practitioners requested that the IRS issue regulations clarifying whether a taxpayer can avoid denial or revocation of a passport "by making a payment that reduces the underpayment to less than $50,000."[47]

The IRS has since made its point of view on this topic utterly clear, explaining on its website that "the IRS will *not* reverse the certification because the taxpayer pays the debt below $50,000."[48] In case someone still was not grasping the IRS's stance on this, the website contains another unambiguous statement: "If you need your U.S. passport to keep your job, once your [SDTD] is certified, you must fully pay the balance, or make an alternative payment arrangement to keep your passport."[49]

E. Does Currently-Not-Collectible Status Affect the Analysis?

Another open issue is, if an individual's federal tax liability exceeds $50,000 and thus is considered an SDTD, can this taint be purged if the IRS places the individual in currently not collectible ("CNC") status.[50] According to a longstanding IRS Policy Statement, the IRS can place a taxpayer in CNC status "in order to remove it from active [collection] inventory" in situations where the taxpayer has no income or assets that the IRS can legally levy or where the taxpayer has limited income or assets but levying them would create financial hardship for the taxpayer.[51]

Certain tax professionals have argued that, if the IRS (whose best interest is served by collecting the maximum amount of tax liabilities possible) has determined that an individual is in such an economic bind that he should be deemed CNC, then, for purposes of Code Sec. 7345, the liability should no longer be considered an SDTD.[52] Other practitioners have placed a finer point on this scenario, arguing that denying or revoking the passport of an individual in CNC status "would generate no additional revenue for the government and will not enhance compliance; rather it would only further punish an individual who cannot pay his/her taxes (like the debtor's prison of the Dickensian era)."[53]

F. What Will the Post-Lien Notices and Pre-Levy Notices Say?

As explained above, the FAST Act added new language to Code Sec. 6320 and Code Sec. 6331, mandating that the IRS include information for taxpayers, in "simple and non-technical terms," about the existence and effects of new Code Sec. 7345. Questions initially arose regarding how, exactly, the IRS would accomplish this task. These have now been answered, with the IRS recently beginning to issue post-lien notices and pre-levy notices containing the following information or warning, depending on your perspective:

> 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 a seriously delinquent tax debt. The FAST Act generally prohibits the State Department from issuing or renewing a passport to a taxpayer with a seriously delinquent tax debt. Seriously delinquent tax debt means an unpaid, legally enforceable federal tax debt of an individual totaling more than $50,000 for which a Notice of Federal Tax Lien has been filed and all administrative remedies under IRC Section 6320 have lapsed or been exhausted, or a levy has been issued. If you are individually liable for a tax debt (including penalties and interest) totaling more than $50,000 and you do not pay the amount you owe or make alternate arrangements to pay, or request a Collection Due Process hearing by [insert date which is 30 days after issuance of relevant post-lien or pre-levy notice], we may notify the State Department that your tax debt is seriously delinquent. The State Department generally will not issue or renew a passport to you after we make this notification. If you currently have a valid passport, the State Department may revoke your passport or limit your ability to travel outside the United States. Additional information on passport certification is available at www.irs.gov/passports.[54]

The IRS has inserted this same language in the "What's New" segment of IRS Publication 54, titled *Tax Guide for U.S. Citizens and Resident Aliens Abroad*.[55]

G. How Will Code Sec. 7345 Affect the Tax Court?

The Tax Court is preparing for the implementation of Code Sec. 7345 and the resulting litigation by issuing "proposed amendments" to the Tax Court Rules of Practice and Procedure on March 28, 2016. These amendments contemplate the introduction of a new Title XXXIV, called *Certification and Failure to Reverse Certification Action with Respect to Passports*. They also entail new Rule 350, which expressly states that the Tax Court shall have jurisdiction over disputes focused on Code Sec. 7345 certifications and decertifications. For its part, new Rule 351 would create a unique application for Tax Court review, *i.e.*, the *Petition for Certification or Failure to Reverse Certification Action Under Code Section 7345(e)*. In the "Explanation" portion of the proposed amendments, the Tax Court indicated, at least as of March 2016, that "there is not an immediate need to provide the proposed amendments set forth in new Title XXXIV as interim amendments because it is unlikely that a Petition under Section 7345 will be filed in the near future." One Tax Court judge pointed out that Congress, in passing Code Sec. 7345, did not specify the proper scope of review or proper standard of review for the Tax Court in these types of cases.[56]

H. Is Code Sec. 7345 Really About Compliance, Cash, or Both?

Based on the language in the GAO report from 2011 and the legislative history to Code Sec. 7345, one would get the impression that the rationale for this new provision is two-fold, increasing taxpayer compliance from fear of international immobility and collecting much-needed tax revenue. This duality may be true, but certain data might make one believe that cash trumps here. Code Sec. 7345 was identified as an "offset" provision in the FAST Act, and the U.S. Joint Committee on Taxation predicts that the IRS's new ability to deny or revoke passports will yield $395 million for the IRS in just the first 10 years.[57]

I. Are the Notification Procedures Adequate?

Concern exists that some taxpayers subject to Code Sec. 7345, particularly those traveling or living abroad, will not receive sufficient/timely notice of critical matters, such as a post-lien notice, pre-levy notice, and/or SDTD certification notice. Generally, the IRS is required to send notices to taxpayers at their "last known address." The IRS uses the address listed on the most recent tax return by default, and taxpayers are able to update the IRS at any time by filing a Form 8822 (*Change of Address*).

The challenges for taxpayers are many, including (i) taxpayers on extended business or personal travel might not have tangible mail (including important IRS notices) forwarded to their foreign location, particularly in this era of email and other electronic communications, (ii) taxpayers moving abroad for the first time may be wholly unaware of the advisability of filing a Form 8822 with the IRS upon departure, (iii) even if the taxpayers make arrangements to forward mail and/or supply the IRS with a timely Form 8822, it is notoriously hard for taxpayers to receive international mail in certain countries, (iv) the IRS does not send notices to taxpayers *via* email, and (v) taxpayers only have 30 days from the date of a post-lien notice or pre-levy notice to seek a CDP hearing. Various tax practitioners and organizations have warned the IRS about the importance of introducing an effective communication system for overseas taxpayers, because relying on the existing procedures could lead to taxpayers learning of a problem for the first time when a U.S. immigration official seizes their passport upon reentering the United States.[58]

J. Are Taxpayers Powerless to Confront Inevitable IRS Delays?

As explained above, Code Sec. 7345(b)(2) provides several exceptions to the general definition of SDTD. Among those exceptions are debts that the taxpayer is paying in a timely manner pursuant to an Installment Agreement under Code Sec. 6159 and debts that the taxpayer has paid or is paying in a timely manner pursuant to an Offer-in-Compromise under Code Sec. 7122. Practitioners have identified the elephant in the room, which is that it can take the IRS, particularly a busy Revenue Officer with a crushing caseload, many months to review all the financial data that taxpayers must provide in applying for an Installment Agreement or Offer-in-Compromise, contact taxpayers and seek additional data or clarifications, confirm certain financial aspects with third parties, obtain internal review and approval from superiors, *etc*. In light of this reality, practitioners suggest that the IRS develop a special system of expediting Installment Agreement and Offer-in-Compromise applications involving taxpayers who have been deprived of a passport under Code Sec. 7345 and postpone passport deprivation in situations where taxpayers have filed proper applications for an Installment Agreement or Offer-in-Compromise and are awaiting a decision from the IRS.[59]

K. What About Litigation Expenses and Delays?

If taxpayers believe that the IRS is wrong about an SDTD certification or decertification, they have one remedy, that is, they can start litigation against the IRS in either U.S. District Court or the Tax Court.[60] The major problem here is that the proverbial wheels of justice tend to turn slowly, even in the most efficient judicial bodies. Certain practitioners have underscored that, while giving taxpayers a way to seek relief is laudable, litigation likely will trigger considerable expenses for the taxpayer and a "significant delay during which a taxpayer might be improperly denied the freedom to travel internationally for business or personal reasons."[61] Accordingly, practitioners have proposed the introduction of some sort of expedited administrative appeal before obligating a taxpayer to litigate.[62] Practitioners emphasized the importance of such an administrative appeal right given pervasive identify theft and the corresponding filing of false returns, which could trigger unwarranted liabilities for taxpayers.[63]

L. Does Filing a Penalty-Abatement Request Affect Matters?

Although not specified in Code Sec. 7345, the legislative history indicates that an SDTD is comprised of taxes, penalties, and interest, and the IRS has adopted this interpretation. Code Sec. 7345(b)(2) identifies various exceptions, explaining that the following situations do not involve SDTDs: an individual has filed a proper request for a CDP hearing and such hearing is still pending; an individual has elected innocent spouse relief under Code Sec. 6015(b) or Code Sec. 6015(c); and an individual has requested innocent spouse relief under Code Sec. 6015(f). Expanding on this theme, practitioners have urged the IRS not to utilize its power to deny or revoke a passport where a component of the relevant SDTD is a penalty, the taxpayer has filed a proper penalty-abatement request, and the IRS has not yet responded to such request.[64]

V. Concerns Raised by National Taxpayer Advocate

Several groups, including the National Taxpayer Advocate ("NTA"), have raised concerns about Code Sec. 7345. In its annual report to Congress, delivered in January 2018, the NTA identified implementation of this tax provision as one of the "most serious problems" in tax administration.[65] The NTA put the matter into perspective, explaining that approximately 270,000 taxpayers have SDTDs that do not meet one of the statutory or discretionary exclusions to certification.[66] The introduction of the passport-denial-or-revocation program, therefore, will have significant effect.

The NTA identifies a number of complaints, two of which are discussed here. First, the NTA believes that the IRS is providing inadequate notice to affected taxpayers, which allegedly violates the Taxpayer Bill of Rights and constitutional due process. The NTA points out three flaws with the pre-levy notice, *i.e.*, Letter 1058 (*Notice of Intent to Levy and Notice of Your Right to a Hearing*). The information about the passport issues is "buried within four or more pages of other information and is delivered at a time when the taxpayer is focusing on resolution of the debt and claiming CDP rights."[67] Moreover, about 75 percent of those taxpayers who might be certified starting in 2018 never even received a pre-levy notice containing information about Code Sec. 7345 because their liabilities predated the revised notices.[68] Lastly, the NTA contends that the IRS's current approach ignores behavioral research about how to increase voluntarily compliance, and it creates additional work for the IRS, which must certify and perhaps later decertify thousands of taxpayers. The NTA summarizes its thoughts on this final point as follows: "A stand-alone notice, focusing specifically on the harm that will occur, issued 30 days prior to a certification (90 days for taxpayers outside the United States) would protect taxpayer rights and motivate taxpayers to resolve their tax debts quickly, which is the purpose of [Section 7345]."[69]

The second main criticism by the NTA focuses on the IRS's refusal to exercise its discretion to exclude certain taxpayers from the passport procedures. The annual report indicates that, as of the start of October 2017, there were some 800 taxpayers, with liabilities over $50,000, who do not fall into either a statutory exclusion or discretionary exclusion from the definition of SDTD, and who had active cases with the Taxpayer Advocate Service ("TAS") to resolve tax issues.[70] From the vantage point of the NTA, the unwillingness of the IRS to exclude this category of taxpayers involves "bizarre reasoning," because the cases accepted by TAS necessarily involve taxpayers with a "significant hardship" and "makes little sense" from the perspective of saving resources because if TAS cannot help on the front end (by reducing a liability or arranging payment through an Installment Agreement or Offer-in-Compromise), then the TAS will just need to get involved later in seeking decertification.[71] The annual report indicates that the NTA, frustrated with the perceived intransigence by the IRS, plans to take independent action:

> To avoid this needless waste of resources, I will be issuing Taxpayer Assistance Orders (TAOs) [under Section 7811] before the program commences with respect to every taxpayer with an assessed, unpaid federal tax debt over $51,000 who has an open case in TAS and who does not otherwise meet an exception or exclusion from certification; the TAOs will order the IRS to not make the referral to the Department of State.[72]

> *Hundreds of thousands of taxpayers will soon be receiving notices of SDTD certifications and thus of their inability to travel internationally.*

To its credit, the annual report by the NTA does not limit itself to throwing stones; it also contains various recommendations for the IRS. These consist of (i) providing a separate notice (apart from the post-lien notice and pre-levy notice) to all taxpayers 30 days *before* an SDTD certification is made, explaining the specific consequences that will occur if the taxpayer fails to rapidly make acceptable payment arrangements and describing all options available to taxpayers for avoiding or reversing certification, (ii) excluding from SDTD certification taxpayers with open cases with TAS, (iii) also excluding from SDTD certification all taxpayers who have requested alternative administrative remedies with the IRS, including Equivalent Hearings, Collection Appeals Program Appeals, or Post Appeals Mediations, and who have not yet received a final determination from the IRS, (iv) creating an ultra-expedited decertification process whereby the IRS transfers to the State Department the necessary forms within two days of receipt, and (v) updating Notice CP508C, which a taxpayer receives soon *after* an SDTD certification, to include data about all possible ways to get decertified and the ability to contact the State Department if a taxpayer has an emergency or humanitarian need to travel.[73]

The NTA released its annual report in January 2018, which was shortly after the IRS issued the guidance discussed directly below. Therefore, it is unknown at this point whether the IRS will accept any of the recommendations from the NTA.

VI. Recent Guidance from the IRS

This article previously identified a long list of issues that remained unclear from the time that Code Sec. 7345 was enacted, in December 2015, through the time that this author published his previous article on the topic, in March 2017. Although the IRS has not yet issued proposed or temporary regulations pertaining to Code Sec. 7345, it has published certain guidance in recent months. The guidance clarifies some issues, while leaving others unresolved. Below is a discussion of where we stand as of January 2018, cognizant that things will continue to evolve in the future.

A. IRS News Release IR-2018-7

The IRS issued a news release on January 16, 2018, putting taxpayers on notice that it will start implementing Code Sec. 7345 now and "strongly encouraging" taxpayers with SDTDs to pay their liabilities to avoid losing their passports. The news release also explains, without going into technicalities, that "a passport won't be at risk" under the new program for taxpayers who are in bankruptcy, victims of a tax-related identify theft, in CNC status with the IRS due to financial hardship, located in a federal disaster area, serving in a combat zone, have a pending application for an Installment Agreement or Offer-in-Compromise, and/or have a tax adjustment already accepted by the IRS that will satisfy the tax liability in full.

Even if taxpayers do not fall into one of the preceding categories, the news release explains that taxpayers can still avoid having the IRS send an SDTD certification to the State Department if they (i) pay the liability in full, (ii) satisfy the liability *via* an Installment Agreement or Offer-in-Compromise approved/accepted by the IRS, (iii) satisfy the liability by paying pursuant to a settlement agreement with the U.S. Department of Justice, (iv) have a pending CDP hearing request regarding a levy, or (v) have made an innocent spouse election or requested innocent spouse relief. This news release might serve to put taxpayers on notice about imminent passport problems, but given its lack of details and use of conversational language, it does not clarify any substantive issues concerning Code Sec. 7345.

B. Notice 2018-1

At essentially the same time that it issued the news release, the IRS also revealed its first piece of published guidance about Code Sec. 7345. Unfortunately, it did not come in the form of a lengthy Revenue Procedure or minutiae-filled regulations. The IRS decided to issue Notice 2018-1, which added little on the information front. Notice 2018-1 is comprised of two segments, the first of which simply provides a basic summary of Code Sec. 7345. The other segment, labeled "Discussion," provides a few bits of relevant information. First, in what comes as no surprise, the IRS tells delinquent taxpayers that they "should consider" resolving their issues by paying in full, entering into an Installment Agreement, or applying for an Offer-in-Compromise.

Second, the IRS confirms that the State Department generally will grant taxpayers a 90-day grace period to handle payment matters, but the window may be shorter if there is an urgent need to travel internationally. Notice 2018-1 states the following in this regard:

> When a certified taxpayer applies for a passport, the State Department, in general, will provide the applicant with 90 days to resolve their tax delinquency … before denying the application [for the passport]. If a taxpayer needs their passport to travel within those 90 days, the taxpayer must contact the IRS and resolve the matter within 45 days from the date of application so that the IRS has adequate time to notify the State Department.

Finally, the IRS addresses taxpayer rights if there is a dispute about the filing of an SDTD certification or the failure to decertify. Notice 2018-1 first confirms that taxpayers are out of luck in terms of quick, inexpensive, administrative procedures: "The taxpayer may not go to IRS Appeals to challenge the certification or the decision by the [IRS] Commissioner or specified delegate not to reverse a certification." Then, Notice 2018-1 describes the limited courses of available action, including calling the number on Notice CP508C or filing a lawsuit with the Tax Court or other appropriate federal court.

C. Internal Revenue Manual

The IRS, in preparing to start the SDTD certification process, updated and expanded the Internal Revenue Manual in December 2017. Much of the information merely consists of summaries of Code Sec. 7345 and its legislative history, but, thankfully, there is some new data here. Below is a discussion of some of the fresh, important material from the IRS.

1. Guidance About the Concept of SDTDs

- The SDTD threshold of $50,000 is the aggregate unpaid balance of assessment. It includes assessed taxes, penalties, and interest, but it does *not* include accrued-but-unassessed penalties and interest.[74]

- As of January 1, 2018, the SDTD threshold, as indexed for inflation, has increased from $50,000 to $51,000.[75]
- Once the SDTD has been certified, paying the account below the threshold of $50,000 (or the appropriate threshold at the time of certification) will *not* result in a decertification.[76]
- Importantly, unless it falls into one of the statutory exclusions (*i.e.*, those identified by Congress) or one of the discretionary exclusions (*i.e.*, those identified by the IRS), an SDTD includes all tax assessments made under an individual's SSN, including individual income taxes, trust fund recovery penalties, business taxes for which the individual is liable, and other civil penalties.[77]
- Equally noteworthy, the IRS indicates that the term SDTD does *not* include certain "non-tax liabilities," such as FBAR penalties because "FBAR penalties are asserted under Title 31 as a non-tax debt … "[78]

2. Guidance About Statutory Exclusions

A pending request for an "Equivalent Hearing" (as opposed to a CDP hearing) in connection with the filing of an NFTL or a proposed levy will *not* prevent a liability from being considered an SDTD.[79]

3. Guidance About Discretionary Exclusions

- The IRS has decided that the following categories of tax debts will be excluded from the calculation of SDTD: (i) debt that is CNC due to financial hardship, (ii) debt that resulted from identity theft, (iii) debt of a taxpayer in bankruptcy, (iv) debt of a deceased taxpayer, (v) debt that is included in a "pending" Offer-in-Compromise, (vi) debt that is included in a "pending" Installment Agreement, (vii) debt with a pending adjustment with the IRS that will fully pay the tax liability, and (viii) debt of a taxpayer located in a federal disaster area.[80]
- The preceding does not apply to Offers-in-Compromise or Installment Agreements made solely for purposes of delaying collection actions by the IRS.[81]
- The IRS expressly reserves the right to alter course later, stating that "[t]hese discretionary exclusion categories are subject to change in the future."[82]

4. Guidance About Notifying the Taxpayer of SDTD Certification

The IRS confirmed that, while it does not delay issuing an SDTD certification, the State Department will afford taxpayers a little wiggle room. If an individual who has been certified by the IRS as having an SDTD applies for a new or renewal passport, the State Department will hold the application for 90 days in order to allow the taxpayer a chance to resolve any certification errors, make full payment, or enter into an acceptable payment alternative with the IRS.[83]

5. Guidance About SDTD Decertification

- The IRS has discretion to request decertification (*i.e.*, removal of SDTD status) for various reasons. Among them is when there is an adjustment, not a payment, to the taxpayer's account that reduces the original certification amount below the threshold.[84]
- The IRS provides an example of an adjustment warranting decertification: "IRS assesses taxpayer's liability of $54,000, of which $9,000 is attributable to a penalty. The taxpayer's seriously delinquent tax debt is certified. The taxpayer requests penalty abatement on the basis of reasonable cause. IRS finds the taxpayer had reasonable cause and abates the penalty, lowering the taxpayer's total liability to $45,000. Since the liability is reduced below the threshold for certification … the taxpayer is eligible for decertification."[85]
- The IRS provides another illustration of an acceptable adjustment: "The taxpayer has a liability of $66,000 for [2015] due to [a substitute-for-return] assessment. The taxpayer is certified as a seriously delinquent tax debt and receives a Notice CP508C. The taxpayer is in the process of renewing their U.S. Passport with the Department of State. The taxpayer files a return for [2015] which reduces the tax debt to $30,000. Once the taxpayer's return for [2015] is processed and posted on IDRS, the taxpayer will be eligible for decertification."[86]
- The IRS warns that not all adjustments, particularly penalty abatements, will lead to SDTD decertification: "For example, a penalty abatement of a certified module due to an administrative waiver under the First Time Abate criteria … will result in decertification, even if the adjusted total liability is less than the threshold amount indexed for inflation."[87]
- The IRS further admonishes that a taxpayer's account will remain as SDTD in many instances, including where the taxpayer requests a CDP hearing for an NTFL or proposed levy for tax periods that are not the basis for the SDTD certification. For instance, a taxpayer is already certified by the IRS as SDTD, a Revenue Officer later issues a pre-levy notice to the taxpayer on an additional/later tax period, and the taxpayer files a timely CDP hearing request. The existing SDTD certification is not reversed, despite the pending CDP hearing, because such hearing relates to tax periods

beyond/after those on which the certification is based.[88]

- An "expedited decertification" process exists, but the IRS will only grant it when (i) a taxpayer is eligible for decertification, (ii) his international travel is scheduled within 45 days or less, and (iii) the taxpayer has a pending application for a new or renewal passport and provides his passport application number. Moreover, the IRS will only allow this if the taxpayer raises a problem with urgent planned travel, because in normal situations IRS personnel are instructed as follows: "Do not offer expedited certification [and] explain that decertification will occur systematically and the State Department will be notified within 45 days."[89]

6. Guidance About Disputes over SDTD Certifications

The IRS confirms that taxpayers have no right to seek administrative review by the Appeals Office of an SDTD certification and that their main remedy is going straight to litigation. The updated Internal Revenue Manual states the following: "The taxpayer is not required to file an administrative claim or otherwise contact the IRS to resolve the erroneous certification issue before filing suit in the Tax Court or a District Court of the United States."[90]

The Internal Revenue Manual explains that, before starting litigation, taxpayers can attempt to resolve disputed SDTD certification issues by (i) calling the number on Notice CP508C, which will get routed to a centralized office in Philadelphia, (ii) personally visiting a taxpayer assistance center, or (iii) sending a written reply to Notice CP508C, which will also get forwarded to Philadelphia.[91]

VII. Conclusion

Hundreds of thousands of taxpayers will soon be receiving notices of SDTD certifications and thus of their inability to travel internationally. This figure likely will grow quickly because, among other things, the IRS recently took the position in its Internal Revenue Manual that the SDTD calculation includes assessed taxes, penalties, and interest charges, and broadly covers individual income taxes, trust fund recovery penalties, business taxes for which an individual is liable, and other civil penalties. The effects of implementing Code Sec. 7345 in January 2018 are uncertain at this point: It might trigger some full tax payments, large numbers of applications for Installment Agreements or Offers-in-Compromise, a significant increase in requests for CDP hearings in response to post-lien notices and pre-levy notices, and/or lots of Tax Court litigation because taxpayers with an SDTD cannot first challenge a certification with the Appeals Office. What is clear, though, is that taxpayers with passport problems would be wise to retain professionals with significant tax collection and tax litigation experience, who are at the forefront of the evolving issues related to Code Sec. 7345.

ENDNOTES

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1 Fixing America's Surface Transportation Act (P.L. 114-94) (Dec. 4, 2015).

2 U.S. Government Accountability Office. Federal Tax Collection—Potential for Using Passport Issuance to Increase Collection of Unpaid Taxes. GAO-11-272 (Mar. 2011).

3 U.S. Government Accountability Office. Federal Tax Collection—Potential for Using Passport Issuance to Increase Collection of Unpaid Taxes. GAO-11-272 (Mar. 2011), at 1.

4 U.S. Government Accountability Office. Federal Tax Collection—Potential for Using Passport Issuance to Increase Collection of Unpaid Taxes. GAO-11-272 (Mar. 2011), at 2.

5 U.S. Government Accountability Office. Federal Tax Collection—Potential for Using Passport Issuance to Increase Collection of Unpaid Taxes. GAO-11-272 (Mar. 2011), at 3.

6 U.S. Government Accountability Office. Federal Tax Collection—Potential for Using Passport Issuance to Increase Collection of Unpaid Taxes. GAO-11-272 (Mar. 2011), at 4.

7 U.S. Government Accountability Office. Federal Tax Collection—Potential for Using Passport Issuance to Increase Collection of Unpaid Taxes. GAO-11-272 (Mar. 2011), at 4–5, 8.

8 U.S. Government Accountability Office. Federal Tax Collection—Potential for Using Passport Issuance to Increase Collection of Unpaid Taxes. GAO-11-272 (Mar. 2011), at 8.

9 U.S. Government Accountability Office. Federal Tax Collection—Potential for Using Passport Issuance to Increase Collection of Unpaid Taxes. GAO-11-272 (Mar. 2011), at 9–14.

10 U.S. Government Accountability Office. Federal Tax Collection—Potential for Using Passport Issuance to Increase Collection of Unpaid Taxes. GAO-11-272 (Mar. 2011), at 10.

11 U.S. Government Accountability Office. Federal Tax Collection—Potential for Using Passport Issuance to Increase Collection of Unpaid Taxes. GAO-11-272 (Mar. 2011), at 16.

12 Code Sec. 7345(b)(1).

13 Code Sec. 7345(f).

14 Code Sec. 7345(b)(2).

15 Code Sec. 7345(c)(1).

16 Legislative history states that, "[i]n the case of a claim for innocent spouse relief, the decertification is only with respect to the spouse claiming relief, not both." *See* U.S. House of Representatives, 114th Cong., 1st Sess., Conference Report 114-357, Dec. 1, 2015, at 532.

17 Code Sec. 7345(c)(2).

18 Code Sec. 7345(d).

19 Code Sec. 7345(e)(1); U.S. Joint Committee on Taxation. "Technical Explanation of the Tax Technical Corrections Act of 2016," JCX-91-16. The legislation amends Code Sec. 7345(e) to clarify that the party against whom an action Tax Court would be brought is the IRS, and to provide a tie-breaker rule stating that the court first acquiring jurisdiction has sole jurisdiction (at 6).

20 *See www.irs.gov/businesses/small-businesses-self-employed/revocation-or-denial-of-passport-in-case-of-certain-unpaid-taxes*, as of February 19, 2017.

21 Code Sec. 7345(e)(2).

22 U.S. Joint Committee on Taxation. General Explanation of Tax Legislation Enacted in 2015. JCS-1-16 (Mar. 2016), at 93.

23 *See www.irs.gov/businesses/small-businesses-self-employed/revocation-or-denial-of-passport-in-case-of-certain-unpaid-taxes*, as of February 19, 2107.

24 Subsection 32101(a) of the FAST Act creates Section 7345. The other relevant provisions originate in Subsections 32101(b) through 32101(f).

25 Section 6320(a)(3) before enactment of the FAST Act.

26 Section 32101(b)(1) of the FAST Act; Section

6320(a)(3)(E).

27 Section 6331(d)(4) before the FAST Act.

28 Section 32101(b)(2) of the FAST Act; Section 6331(d)(4)(G).

29 Section 32101(c) of the FAST Act. The information that may be disclosed is limited to the identity of the taxpayer and the amount of the tax liability.

30 Section 32101(c) of the FAST Act.

31 Section 32101(e)(1) of the FAST Act.

32 Section 32101(e)(2) of the FAST Act.

33 Section 32101(e)(3) of the FAST Act.

34 Section 32101(f)(1)(A) of the FAST Act.

35 Section 32101(f)(1)(B) of the FAST Act.

36 Section 32101(f)(2)(A) and (B) of the FAST Act.

37 U.S. House of Representatives, 114th Cong., 1st Sess., Conference Report 114-357, Dec. 1, 2015, at 531.

38 U.S. Joint Committee on Taxation. General Explanation of Tax Legislation Enacted in 2015. JCS-1-16 (Mar. 2016), at 92.

39 Code Sec. 6671(a); Reg. §301.6671-1(a).

40 Code Sec. 6038; Reg. §1.6038-2; Code Sec. 6046; Reg. §1.6046-1; Code Sec. 6679; Reg. §301.6679-1; Instructions to Form 5471.

41 Code Sec. 6038(a)(2); Reg. §1.6038-2(i).

42 Code Sec. 6038(b)(1); Reg. §1.6038-2(k)(1)(i); Code Sec. 6046(f); Reg. §1.6046-1(k).

43 Code Sec. 6038(b)(2); Reg. §1.6038-2(k)(1)(ii); Code Sec. 6046(f); Reg. § 1.6046-1(k).

44 U.S. Treasury Inspector General for Tax Administration. Systematic Penalties on Late-Filed Forms Related to Certain Foreign Corporations Were Properly Assessed, but the Abatement Process Needs Improvement. Report 2013-30-111 (Sept. 25, 2013).

45 IRM §21.8.2.20.1 (Oct. 1, 2014); *Failure to File the Form 5471—Category 4 and 5 Filers—Monetary Penalty*. IRS International Practice Unit (updated as of Oct. 7, 2015).

46 *See, e.g.*, John M. Colvin & Claire H. Taylor, *Owe the IRS? Passports at Risk Under New Code Sec. 7345*, J. Tax Practice & Procedure, Feb.–Mar. 2016, at 37; Carol M. Luttati, *Revocation or Denial of Passports for Seriously Delinquent Tax Debts*, J. Tax Practice & Procedure, June–July 2016, at 13.

47 Kenneth M. Horwitz, *TSCPA Seeks Proposed Regs on Denial of Passports for Unpaid Taxes*, 134 Tax Notes Today 17 (2016).

48 *See www.irs.gov/businesses/small-businesses-self-employed/revocation-or-denial-of-passport-in-case-of-certain-unpaid-taxes*, as of February 19, 2017.

49 *See www.irs.gov/businesses/small-businesses-self-employed/revocation-or-denial-of-passport-in-case-of-certain-unpaid-taxes*, as of February 19, 2017.

50 For general information about CNC status and related IRS procedures, *see* IRM §5.16.1—Currently Not Collectible (Dec. 17, 2015) and IRM §5.19.17—Campus Procedures for Currently Not Collectible and Offers in Compromise (Dec. 7, 2015).

51 IRM §1.2.14.1.14—Policy Statement 5-71 (Nov. 19, 1980). In this context, "hardship" exists if the levy action by the IRS prevents the taxpayer from meeting necessary living expenses.

52 *See* Kenneth M. Horwitz, *TSCPA Seeks Proposed Regs on Denial of Passports for Unpaid Taxes*, 134 Tax Notes Today 17 (2016); John M. Colvin & Claire H. Taylor, *Owe the IRS? Passports at Risk Under New Code Sec. 7345*, J. Tax Practice & Procedure, Feb.–Mar. 2016, at 37.

53 John M. Colvin & Claire H. Taylor, *Owe the IRS? Passports at Risk Under New Code Sec. 7345*, J. Tax Practice & Procedure, Feb.–Mar. 2016, at 37.

54 Letter 3172 (DO) Rev. 9-20-16; Notice CP 504.

55 IRS Publication 54 (2016), at 2.

56 James S. Halpern, *What Has the U.S. Tax Court Been Doing? An Update*, Tax Notes 1285 (May 30, 2016).

57 U.S. Joint Committee on Taxation. Estimated Revenue Effects of the Revenue Provisions Contained in the Conference Agreement for H.R. 22, the "Fixing America's Surface Transportation ('FAST') Act." JCX-140-15, December 3, 2015.

58 *See* Kenneth M. Horwitz, *TSCPA Seeks Proposed Regs on Denial of Passports for Unpaid Taxes*, 134 Tax Notes Today 17 (2016); John M. Colvin & Claire H. Taylor, *Owe the IRS? Passports at Risk Under New Code Sec. 7345*, J. Tax Practice & Procedure, Feb.–Mar. 2016, at 37.

59 *See* Kenneth M. Horwitz, *TSCPA Seeks Proposed Regs on Denial of Passports for Unpaid Taxes*, 134 Tax Notes Today 17 (2016); John M. Colvin & Claire H. Taylor, *Owe the IRS? Passports at Risk Under New Code Sec. 7345*, J. Tax Practice & Procedure, Feb.–Mar. 2016, at 37.

60 Code Sec. 7345(e)(1); U.S. Joint Committee on Taxation. "Technical Explanation of the Tax Technical Corrections Act of 2016," JCX-91-16. The legislation amends Code Sec. 7345(e) to clarify that the party against whom an action Tax Court would be brought is the IRS, and to provide a tie-breaker rule stating that the court first acquiring jurisdiction has sole jurisdiction (at 6).

61 Kenneth M. Horwitz, *TSCPA Seeks Proposed Regs on Denial of Passports for Unpaid Taxes*, 134 Tax Notes Today 17 (2016).

62 Kenneth M. Horwitz, *TSCPA Seeks Proposed Regs on Denial of Passports for Unpaid Taxes*, 134 Tax Notes Today 17 (2016).

63 Kenneth M. Horwitz, *TSCPA Seeks Proposed Regs on Denial of Passports for Unpaid Taxes*, 134 Tax Notes Today 17 (2016).

64 Kenneth M. Horwitz, *TSCPA Seeks Proposed Regs on Denial of Passports for Unpaid Taxes*, 134 Tax Notes Today 17 (2016).

65 National Taxpayer Advocate. 2017 Annual Report to Congress (Jan. 2018).

66 National Taxpayer Advocate. 2017 Annual Report to Congress (Jan. 2018), at 73.

67 National Taxpayer Advocate. 2017 Annual Report to Congress (Jan. 2018), at 77.

68 National Taxpayer Advocate. 2017 Annual Report to Congress (Jan. 2018), at 77.

69 National Taxpayer Advocate. 2017 Annual Report to Congress (Jan. 2018), at 77.

70 National Taxpayer Advocate. 2017 Annual Report to Congress (Jan. 2018), at 11.

71 National Taxpayer Advocate. 2017 Annual Report to Congress (Jan. 2018), at 11.

72 National Taxpayer Advocate. 2017 Annual Report to Congress (Jan. 2018), at 11.

73 National Taxpayer Advocate. 2017 Annual Report to Congress (Jan. 2018), at 83.

74 IRM §5.1.12.27.2 (Dec. 20, 2017).

75 IRM §5.1.12.27.2 (Dec. 20, 2017).

76 IRM §5.1.12.27.2 (Dec. 20, 2017).

77 IRM §5.1.12.27.2 (Dec. 20, 2017).

78 IRM §5.1.12.27.2 (Dec. 20, 2017).

79 IRM §5.1.12.27.2 (Dec. 20, 2017); IRM §5.1.12.27.3 (Dec. 20, 2017).

80 IRM §5.1.12.27.4 (Dec. 20, 2017). In the context of an Offer-in-Compromise, it is not "pending" unless the taxpayer has completed and executed Form 656, provided all necessary financial data, paid the application fee, and paid the mandatory 20 percent of the proposed settlement amount. *See* IRM §5.8.2.3.1. With respect to an Installment Agreement, it is not considered "pending" unless the taxpayer has completed and executed Form 9465, provided all necessary financial data, proposed a specific monthly payment amount, and maintained tax filing compliance in all years. *See* IRM §5.14.1.3.

81 IRM §5.1.12.27.4 (Dec. 20, 2017).

82 IRM §5.1.12.27.4 (Dec. 20, 2017).

83 IRM §5.1.12.27.7 (Dec. 20, 2017).

84 IRM §5.1.12.27.8 (Dec. 20, 2017).

85 IRM §5.1.12.27.8 (Dec. 20, 2017).

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88 IRM §5.1.12.27.8 (Dec. 20, 2017).

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90 IRM §5.1.12.27.9 (Dec. 20, 2017).

91 IRM §5.1.12.27.8 (Dec. 20, 2017); IRM §5.19.1.5.19.10 (Dec. 26, 2017).