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Unintended Impact on Overseas Americans of the “FAST Act”

On December 4, 2015, HR 22, the “FAST Act” (*Fixing America’s Surface Transportation*) became Public Law N° 114-94. Title XXXII, Subtitle A of the law, relating to “Offsets”, contains provisions for the denial of issuance or revocation of the passport of any individual who has a “seriously delinquent” tax debt over \$50,000.

According to Title XXXII, if notified by the Secretary of the Treasury, “the Secretary of State shall not issue a passport to any (such) individual”.

Also “the Secretary of State may revoke a passport previously issued to any (such) individual”.

Also, “the Secretary of State may issue a passport, in emergency circumstances or for humanitarian reasons, to (any such) individual”.

If the Secretary of State decides to revoke a previously issued passport, the Secretary may 1) limit the previously issued passport only for return travel to the United States or 2) issue a limited passport that only permits return travel to the United States.

Our organizations understand the need for the IRS to identify and prevent the potential escape from the U.S. of individuals with seriously delinquent tax debts.

We must, however, point out the major differences between the delinquent taxpayer residing in the United States and the one who resides abroad:

1. *For an overseas American*, a valid U.S. passport is often the only means of identification valid for: establishing or maintaining residency in that person’s city of residence and employment; opening a bank account, obtaining a mortgage or other loan; registering in a university; obtaining a marriage license, etc. Losing one’s passport in a foreign country can deprive an individual of his/her civil status, leaving the person, in effect, stateless. *For a resident of the United States*, it represents **only** a means of leaving and returning to the United States (thereby potentially avoiding the tax authorities).
2. *For an overseas American*, a valid U.S. passport is generally the only means of leaving and returning to the country where he/she resides abroad. Losing one’s passport could mean losing the ability to travel to a place of employment in another country, one’s home and family after working in another country, a family funeral or wedding, etc.* Such freedom of mobility is equivalent, *for a resident of the United States*, to the ability to travel from Maine to Florida or from Georgia to California – no more, no less.
3. *For an overseas American*, “return travel to the United States” would generally exacerbate the problem, not resolve it: the person’s tax records, correspondence with tax authorities, and access to financial accounts are in the country of residence abroad, not in the United States, so that the individual would lose the ability to defend him/herself by, in effect, being trapped in the United States.



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4. *For an overseas American*, since the enactment of FATCA, “tax debts” can now include large sums of which the individual is unaware, because of late, incomplete or incorrect filing of, for example, the Foreign Bank Account Report (an obligation of which many are unaware unless they are informed by the press or by organizations like ours – information provided by the IRS and Treasury Department to citizens abroad is dependent on the taxpayer knowing where and how to access it).
5. *For an overseas American*, correspondence with U.S. tax authorities is far more complicated than for a resident of the United States, due to the time required for international postage and to frequent mistakes in labeling of international mail (it is even possible that the IRS notice may never actually reach the taxpayer abroad). In some cases, it is the filer’s tax preparer who is informed of the problem, which may lead to further delays. Deadlines can be missed through no fault of the filer, leading to penalties which only increase the tax debt.
6. *Overseas Americans* have lost their last resources for receiving information and counsel from U.S. tax authorities, with the closing of IRS offices abroad and of the international helpline, alongside the reduction in the number of IRS agents available in America to handle incoming phone calls. Add to this the cost of trying to call Philadelphia from Nairobi or Jakarta, for example, and that of hiring the services of international tax attorneys. The average overseas American is very often ill-informed and cut off from resources far more readily available to the delinquent filer in the United States.

In view of these factors which both make it more difficult for overseas Americans to be properly informed and defend themselves against tax authorities and make a valid passport an indispensable document in their day-to-day lives, we recommend that the definitions of “emergency circumstances” and “humanitarian reasons” be broadened to allow for consideration of the unique circumstances of U.S. citizens living and working abroad and the undue burden that deprivation of a passport would place on them.

** We respectfully point out that depriving an individual of the right to travel freely violates Article 13 of the Universal Declaration of Human Rights: “(2) Everyone has the right to leave any country, including his own, and to return to his country.”*