

**MSP
#6****PASSPORT DENIAL AND REVOCATION: The IRS's Plans for Certifying Seriously Delinquent Tax Debts Will Lead to Taxpayers Being Deprived of a Passport Without Regard to Taxpayer Rights****RESPONSIBLE OFFICIALS:**

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TAXPAYER RIGHTS IMPACTED¹

- *The Right to Be Informed*
- *The Right to Challenge the IRS's Position and Be Heard*
- *The Right to a Fair and Just Tax System*

DEFINITION OF PROBLEM

In 2015, Congress passed the Fixing America's Surface Transportation (FAST) Act, which requires the Department of State to deny an individual's passport application and allows the Department of State to revoke or limit an individual's passport if the IRS has certified the individual as having a seriously delinquent tax debt.² Although the IRS does not plan to implement the passport certification program until early 2018, the proposed IRS procedures and policies raise concerns about how the program will harm taxpayers and infringe upon their rights. Currently, an estimated 270,000 taxpayers meet the criteria for a seriously delinquent tax debt and do not meet one of the statutory exceptions or discretionary exclusions to certification.³ The IRS expects to certify 2,700 taxpayers when it initially implements the program in early 2018, and continue with certifications throughout the year in phases based on taxpayer response rates.⁴ At this time, the IRS will not be sending recommendations or requests to the Department of State to revoke taxpayers' passports; although, the Department of State will revoke passports in accordance with its longstanding procedures.⁵ Nonetheless, taxpayers will be harmed when their passport applications are denied. The National Taxpayer Advocate is concerned that:

- The IRS's failure to provide adequate notice prior to certifying a taxpayer's seriously delinquent tax debt infringes on taxpayer rights and constitutional due process protections;
- The IRS's refusal to exclude taxpayers who already have open TAS cases or who are pursuing other administrative rights frustrates the purpose of the law and jeopardizes taxpayer rights;
- Taxpayers may be unable to resolve their tax debts and have their certifications reversed within the 90-day holding period for passport applications; and

1 See Taxpayer Bill of Rights (TBOR), www.TaxpayerAdvocate.irs.gov/taxpayer-rights. The rights contained in the TBOR are now listed in the Internal Revenue Code (IRC). See Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Division Q, Title IV, § 401(a) (2015) (codified at IRC § 7803(a)(3)).

2 Pub. L. No. 114-94, Div. C, Title XXXII, § 32101, 129 Stat. 1312, 1729-32 (2015) (codified as IRC § 7345) (hereinafter FAST Act).

3 These numbers reflect the number of taxpayers who meet certification criteria and do not qualify for an exception as of October 2017. Small Business/Self Employed Division (SB/SE) response to TAS's information request (Oct. 18, 2017).

4 SB/SE response to TAS information request (Oct. 18, 2017).

5 SB/SE response to TAS Fact Check (Dec. 18, 2017).

- Notices to taxpayers leave out important information related to taxpayer rights.

ANALYSIS OF PROBLEM

Background

Prior to passing the FAST Act, Congress had introduced multiple bills to deny passport applications or revoke passports for taxpayers with a seriously delinquent tax debt.⁶ Congress was concerned about challenges the IRS faced in collecting unpaid tax debt and the significant amount of unpaid federal tax debt owed by passport holders, and it believed it could increase tax compliance by linking passport issuance with paying a tax debt.⁷ Under the FAST Act, a seriously delinquent tax debt is an “unpaid, legally enforceable federal tax liability of an individual,” which:

- Has been assessed;
- Is greater than \$50,000 (adjusted for inflation);⁸ and
- Meets either of the following criteria: (1) a notice of lien has been filed under Internal Revenue Code (IRC) § 6323 and the Collection Due Process (CDP) hearing rights under IRC § 6320 have been exhausted or lapsed; or (2) a levy has been made under IRC § 6331.⁹

There are statutory exceptions, which include a debt:

- That is being timely paid through an installment agreement (IA) or offer in compromise (OIC);
- For which collection is suspended because the taxpayer requested a CDP hearing or a CDP hearing is pending; or
- For which collection is suspended because the taxpayer has requested relief from joint liability (known as innocent spouse relief).¹⁰

In addition, the IRS has created discretionary exclusions in its Internal Revenue Manual (IRM) for debts that:

- Are determined to be in currently not collectible (CNC) status due to hardship;¹¹

6 See e.g., S. 2132, 112th Cong. § 305 (2012); H.R. 3146, 113th Cong. § 4 (2013); S. 1269, 114th Cong. § 1001 (2015).

7 S. REP. No. 114-45, at 57 (2015). In 2011, the Government Accountability Office found that during fiscal year (FY) 2008, over 224,000 passports (over one percent of the 16 million passports issued during FY 2008) were issued to persons owing over \$5.8 billion in unpaid federal taxes. Government Accountability Office (GAO), GAO 11-272, *Federal Tax Collection: Potential for Using Passport Issuance to Increase Collection of Unpaid Taxes* (Mar. 2011), <http://www.gao.gov/new.items/d11272.pdf>.

8 At the time of drafting this discussion, TAS was not aware of any inflation adjustment to the \$50,000 amount. On January 8, 2017, the IRS published its Internal Revenue Manual (IRM) related to the passport program, which announced that this amount would be increased to \$51,000 as of January 1, 2018. IRM 5.19.1.5.19.2, *Seriously Delinquent Tax Debt* (Jan. 8, 2018). Because of the late timing of this announcement, this discussion and the data cited within use \$50,000 as the relevant amount.

9 FAST Act § 32101(a) (codified as IRC § 7345(b), 32101(f)). Generally, the IRS must notify the taxpayer of the right to a collection due process (CDP) hearing 30 days prior to issuing the first levy for the taxable period. IRC § 6330(a)(1). However, the Code provides exceptions, such as for levies where the collection of tax is in jeopardy or levies of a taxpayer’s state income tax refund. In these cases, the CDP hearing shall occur within a reasonable time after the levy. IRC § 6330(f).

10 FAST Act § 32101(a) (codified as IRC § 7345(b)(2)).

11 Currently not collectible (CNC) status removes taxpayer accounts from active collection inventory. IRM 5.19.17.2, *Currently not Collectible (CNC) Procedures* (Oct. 5, 2017). The IRS places taxpayer accounts into CNC Hardship status when “collection of the liability would create a hardship for taxpayers by leaving them unable to meet necessary living expenses.” IRM 5.19.1.1.6.5.2, *Hardship CNC Closing Codes* (Mar. 1, 2016).

- Result from identity theft;
- Belong to a taxpayer in a disaster zone;
- Belong to taxpayer in bankruptcy;
- Belong to a deceased taxpayer;
- Are included in a pending OIC or pending IA; and
- For which there is a pending claim and the resulting adjustment is expected to result in no balance due.¹²

The law delays certification for taxpayers in a combat zone¹³ and provides an exception allowing the Department of State to issue a passport in emergency circumstances or for humanitarian reasons.¹⁴ If a certification is found to be erroneous, the debt is fully satisfied, it becomes legally unenforceable, or it ceases to be a seriously delinquent tax debt due to a statutory exception, the IRS must reverse the certification and notify the Department of State and the taxpayer.¹⁵ The IRS will systemically send certifications and decertifications to the Department of State on a weekly basis, with decertifications required by law to generally be sent within 30 days of a taxpayer meeting the criteria.¹⁶

The IRS's failure to provide adequate notice prior to certifying the taxpayer's seriously delinquent tax debt infringes on taxpayer rights and constitutional due process protections

Under the statute, the IRS must notify the taxpayer of a certification or decertification around the same time as it transmits it to the Department of State.¹⁷ The IRS also must include in its CDP hearing notices, information about the certification of seriously delinquent tax debts and the denial, revocation, or limitation of passports.¹⁸ The IRS's failure to provide any additional notice beyond these requirements impairs the taxpayer's *right to be informed* and *right to challenge the IRS's position and be heard* because taxpayers may not learn the IRS has certified their tax debts until after certification.

The IRS does not send a stand-alone notice prior to certification and there is no holding period — once the IRS sends the certification notice to the taxpayer, passport denial can occur at any time because the certification is sent to the Department of State at that same time. Thus, the IRS does not provide a meaningful opportunity to contest the certification before it occurs.

12 IRM 5.19.1.5.19.4, *Discretionary Certification Exclusions* (Jan. 8, 2018).

13 FAST Act § 32101(d) (codified at IRC § 7508(a)).

14 FAST Act § 32101(e)(1)(B).

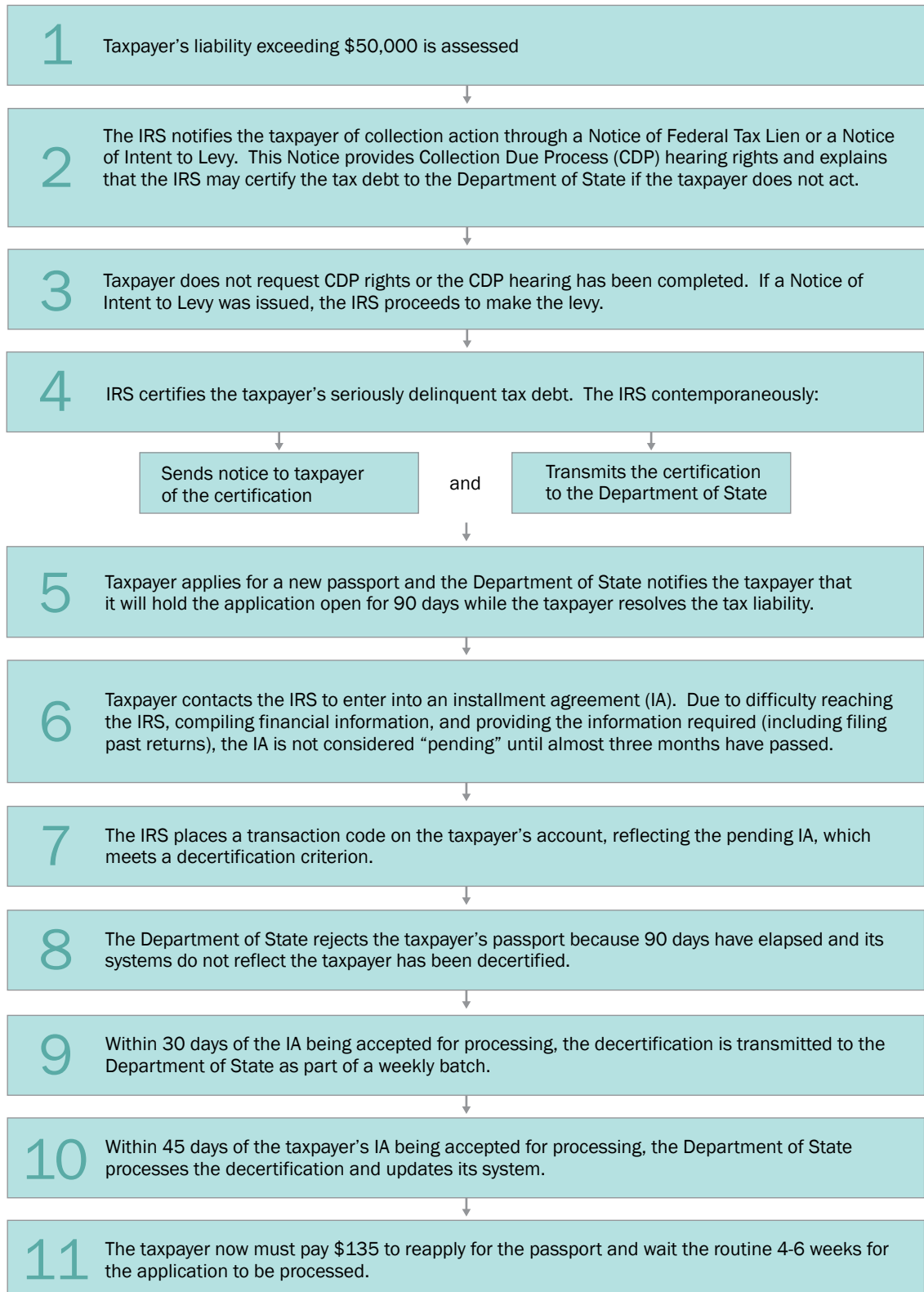
15 FAST Act § 32101(a) (codified at IRC § 7345(c)).

16 FAST Act § 32101(a) (codified at IRC § 7345(c)(2)). An erroneous certification requires the decertification notice to be sent to the Department of State as soon as practicable. *Id.* See IRM 5.19.1.5.19.8, *Certification Process* (Jan. 8, 2018); IRM 5.19.1.5.19.9, *Reversal of Certification* (Jan. 8, 2018).

17 The statute requires “contemporaneous notice.” The notice must explain the taxpayer’s right to bring suit in U.S. Tax Court or a U.S. district court to determine whether the certification was erroneous or whether the IRS has failed to reverse it. FAST Act § 32101(a) (codified as IRC § 7435(d)).

18 FAST Act § 32101(b) (codified as IRC §§ 6320(a)(3)(E), 6331(d)(4)(E)).

Example of How Passport Certification Process Will Work



This lack of notice may violate the Due Process Clause of the Constitution, which protects the right to travel internationally.¹⁹ In the context of passport denial for unpaid child support,²⁰ the Court of Appeals for the Second Circuit has found that statute meets due process requirements because it provides for notice and an opportunity to be heard prior to the state agency certifying the unpaid child support to the federal government.²¹ In the unpaid child support cases, a Pre-offset Notice (PON) must be issued for all new cases within the U.S. Passport Denial Program. There is then a 30-day holding period after the notice to the taxpayer and before the Department of State is notified and passport denial can occur. The primary focus of the PON is on the pending consequences of not resolving the unpaid amount, including passport denial.²² In contrast, the IRS does not send a stand-alone notice prior to certification and there is no holding period — once the IRS sends the certification notice to the taxpayer, passport denial can occur at any time because the certification is sent to the Department of State at that same time.²³ Thus, the IRS does not provide a meaningful opportunity to contest the certification before it occurs.

The passport language in the CDP notice may not constitute effective notice because it 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.²⁴ Additionally, over three-quarters of the individual taxpayers potentially eligible to be certified did not receive the benefit of the passport language in the CDP notice at all because they received their CDP notices prior to the IRS including it.²⁵ Despite TAS's request, the IRS has no intention of giving these taxpayers additional, advanced notice. Finally, the IRS's approach to providing notice ignores behavioral research²⁶ and creates extra work for the IRS, who must process the certification and then reverse it when the taxpayer resolves the liability or meets an exclusion criterion. A stand-alone notice, focussing specifically on the harm that will occur, issued 30 days prior to 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 the statute.

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- 19 See e.g., *Kent v. Dulles*, 357 U.S. 116 (1958). Article 13 of the Universal Declaration of Human Rights states “Everyone has the right to leave any country, including his own, and to return to his country.” United Nations, Universal Declaration of Human Rights, GA Res. 217A (III), UN Doc A/810 (1948).
- 20 The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 requires the Department of State to deny a passport application and allows it to revoke or limit a passport if the person owes delinquent child support exceeding \$5,000 (subsequently lowered to \$2,500). Pub. L. No. 104-193, 110 Stat. 2252 (codified as 42 U.S.C. § 652(k)(1)).
- 21 *Weinstein v. Albright*, 261 F.3d 127 (2nd Cir. 2001), *aff'g* 2000 WL 1154310 (S.D.N.Y. 2000).
- 22 See Federal Parent Locator Service, *Federal Offset Program Technical Guide*, Appendix I-17 (Dec. 10, 2012), https://www.acf.hhs.gov/sites/default/files/ocse/fop_user_guide.pdf.
- 23 As discussed below, once a certified taxpayer applies for a passport, the Department of State will hold the passport application open for a “holding period” of 90 days. However, this is different from the holding period in the child support context because the taxpayer is unable to receive a new or renewed passport during this time, at least until the tax debt is resolved. The holding period in the child support context provides time for the person to resolve the debt beforehand and if the person does so, there is never a period when the person cannot receive a new or renewed passport.
- 24 The CDP letter spans at least four pages and includes other information such as how to request a CDP hearing, other actions the IRS may take (such as a lien or levy), and interest and penalty charges. IRS, Letter 1058, *Notice of Intent to Levy and Notice of Your Right to a Hearing* (Jan. 2017).
- 25 These taxpayers owe over \$50,000 in unpaid assessments and received a CDP notice by December 31, 2016, which was not undeliverable, unclaimed, or refused, and did not receive a subsequent CDP notice in 2017. Some of the total number of taxpayers with tax debts of more than \$50,000 will meet statutory or discretionary exclusion criteria.
- 26 By applying behavioral insights, such as the concept of salience, the IRS could increase taxpayers' attention to the passport notices by ensuring the communications are novel (not buried within another notice) and are sent at the time when they are relevant to the taxpayer — shortly before the certification will occur and the taxpayer can still act to avoid certification. See National Taxpayer Advocate 2016 Annual Report to Congress 50-63 (Most Serious Problem: *Voluntary Compliance: The IRS Is Overly Focused on So-Called “Enforcement” Revenue and Productivity, and Does Not Make Sufficient Use of Behavioral Research Insights to Increase Voluntary Tax Compliance*).

Over three-quarters of the individual taxpayers potentially eligible to be certified did not receive the benefit of the passport language in the Collection Due Process (CDP) notice at all because they received their CDP notices prior to the IRS including it.

The IRS's refusal to exclude taxpayers who are experiencing significant hardship and have already open TAS cases, or who are exercising administrative rights frustrates the purpose of the law and jeopardizes taxpayer rights

The passport certification program was intended to assist the IRS with difficult to collect, unpaid tax debts.²⁷ For taxpayers who are actively working with the IRS to resolve their debts, it is unclear what purpose is served by certifying their tax debts. In the context of private debt collection, the IRS has agreed to not refer open TAS cases to private collection agencies.²⁸ The National Taxpayer Advocate has repeatedly raised to the then-Commissioner of Internal Revenue and the Commissioner of the Small Business/Self Employed Operating Division the need to exclude already open TAS cases from the inventory of taxpayers whose debts the IRS will certify as seriously delinquent. The IRS has significant discretion to provide certification exclusions.²⁹ Taxpayers are excluded from certification if they receive CNC hardship status, but taxpayers with similar circumstances who come to TAS because they experience a significant hardship and have been unable to obtain a collection alternative or otherwise resolve their debt on their own would be certified.³⁰

Despite this disparate treatment among similarly situated taxpayers, the IRS stated one of its reasons for not excluding TAS cases was to avoid disparate treatment among taxpayers with seriously delinquent tax debts.³¹ The IRS also stated that excluding a taxpayer who did not meet an exception would defeat the purpose of the statute. This response is ludicrous, given the IRS itself has created non-statutory exceptions that somehow have not “defeated the purpose of the statute.”³² Moreover, TAS accepts cases only from taxpayers who are suffering or are about to suffer a significant hardship, as defined in the Internal Revenue Code and Treasury Regulations,³³ and only keeps cases open if taxpayers are working to achieve a resolution.³⁴ Once a case is closed, taxpayers would be certified if they did not meet an exclusion. In fiscal year 2017, TAS closed approximately 2,700 balance due cases where the taxpayer owed more than \$50,000 and received full or partial relief.

27 “The Committee is aware that the amount of unpaid Federal tax debts continues to present a challenge to the IRS. The Committee is also aware that a significant amount of unpaid Federal tax debt is owed by persons to whom passports have been issued... The Committee believes that tax compliance will increase if issuance of a passport is linked to payment of one’s tax debts.” S. REP. No. 114-45, at 57 (2015).

28 National Taxpayer Advocate FY 2018 Objectives Report to Congress, vol. 2, 97.

29 The statute states: “If the Secretary receives certification by the Commissioner of Internal Revenue that an individual has a seriously delinquent tax debt...” FAST Act § 32101(a) (codified as IRC § 7345(a)).

30 IRM 5.16.1.2.9, *Hardship* (Aug. 25, 2014) provides a definition of “hardship” for CNC status.

Treas. Reg. § 301.7811(a)(4)(2) provides the definition of a “significant hardship” for the purposes of issuing a Taxpayer Assistance Order (TAO).

31 Email from SB/SE Commissioner to National Taxpayer Advocate (Sept. 20, 2017) (on file with TAS).

32 See IRM 5.19.1.5.19.4, *Discretionary Certification Exclusions* (Jan. 8, 2018).

33 IRC § 7811(a)(2); Treas. Reg. § 301.7811(a)(4)(ii).

34 IRM 13.1.21.1.3.19, *No or Partial Reply from Taxpayer* (Feb. 2, 2011).

The IRS also considered the following factors in deciding not to exclude TAS cases:

- “Only” 10 percent of open TAS cases met passport certification criteria;
- Only taxpayers who are in the process of applying for or renewing a passport would be affected;
- TAS can expedite decertification if it identifies a case meeting exclusion criteria;
- If TAS and the IRS come to a resolution that meets one of the exclusion criteria, the taxpayer will be systemically decertified; and
- The Department of State applies a 90-day holding period before a passport application is denied.³⁵

As of October 1, 2017, there were approximately 800 TAS cases where the taxpayer had an aggregate, unpaid, assessed tax liability of more than \$50,000, and the taxpayer did not qualify for either a statutory exception or a discretionary exclusion as defined in the IRM.³⁶ The IRS is incorrect that only taxpayers currently seeking a passport or renewal are affected because the statute also provides the Department of State with the authority to revoke passports,³⁷ and there may be situations where taxpayers need a new passport in the future before they can resolve their tax debts. Certifying a taxpayer already trying to resolve their tax debt, only to require TAS to request and the IRS to process a manual expedited decertification, makes little sense from a resource and taxpayer rights perspective. As discussed below, the expedited decertification procedures and 90-day holding period may not provide relief.

As of October 1, 2017, there were approximately 800 TAS cases where the taxpayer had an aggregate, unpaid, assessed tax liability of more than \$50,000, and the taxpayer did not qualify for either a statutory exception or a discretionary exclusion as defined in the Internal Revenue Manual.

Although the statute only references administrative rights provided as part of a CDP hearing, the legislative history makes clear Congress intended to “permit revocation of a passport only after the IRS has followed its examination and collection procedures under current law and the taxpayer’s administrative and judicial rights have been exhausted or lapsed.”³⁸ One of a taxpayer’s administrative rights and rights under the Taxpayer Bill of Rights (TBOR) is to seek assistance from TAS. When one reads IRC § 7811³⁹ in harmony with the FAST Act, it is clear taxpayers who are already seeking assistance from TAS should be excluded. Similarly, there are other administrative remedies that

35 Email from SB/SE Commissioner to National Taxpayer Advocate (Sept. 20, 2017) (on file with TAS).

36 IRC § 7345(b)(2). IRM 5.19.1.5.19.4, *Discretionary Certification Exclusions* (Jan. 8, 2018). This analysis does not include as an exclusion any taxpayer who has an offer in settlement. Taxpayers in ZIP codes that were declared disaster areas were determined from analyzing the zip codes where the disaster declaration lasts past October 1, 2017, as defined by the following website: <http://www.icce.irs.gov/fema/>.

37 FAST Act § 32101(e)(2). *But see* SB/SE response to TAS information request (Oct. 18, 2017) (stating the IRS will not be making requests to the Department of State to revoke taxpayers’ passports).

38 H.R. REP. No. 114-357, at 531-32 (2015).

39 IRC § 7811 authorizes the National Taxpayer Advocate to issue a TAO when a taxpayer is suffering or is about to suffer a significant hardship as a result of the manner in which the internal revenue laws are being administered.

Certifying a taxpayer already trying to resolve their tax debt, only to require TAS to request and the IRS to process, a manual expedited decertification, makes little sense from a resource and taxpayer rights perspective.

should be excluded. Notably, Congress specified “examination and collection procedures *under the law* [emphasis added]” but did not make the same specification for other administrative rights, which include: Equivalent Hearings,⁴⁰ Collection Appeals Program (CAP) procedures,⁴¹ and the Post Appeals Mediation program.⁴² As noted earlier, the IRS has wide discretion to establish administrative exclusions to certification. Refusing to exclude taxpayers working with TAS or exercising established administrative rights does not achieve the purpose of the law and violates taxpayer rights.

Taxpayers may be unable to resolve their tax problems and have their passport applications approved during the 90-day holding period for keeping passport applications open

The Department of State will hold passport applications of certified taxpayers open for 90 days before denying them to allow the taxpayers to resolve their tax debts. However, the IRS errs by designing its policies and procedures under the assumption that the 90-day period will provide relief to most taxpayers. The IRS cites the 90-day period as a reason for not excluding open TAS cases, but this argument ignores the reality of TAS casework — it tends to be complex, cannot be resolved through normal IRS channels, and often takes additional time. Notwithstanding that TAS works cases expeditiously and holds its employees accountable for taking timely actions,⁴³ the average TAS collection case stays open for 88 days, from receipt to completion of all actions necessary to resolve the taxpayer’s problem.⁴⁴ When you combine this time with the up to 30 days required for transmitting the decertification, the 90-day holding period will be unhelpful for many taxpayers with TAS cases.

Taxpayers trying to resolve their tax debts on their own may be unable to do so within the 90-day period because during the 2017 filing season, the level of service on the IRS’s Balance Due phone line was only 40 percent and the average hold time was 47 minutes.⁴⁵ Furthermore, the Department of State passport hold letter advises “it may take an additional 45 days after you resolve your debt with the IRS

40 Equivalent Hearings (EHs) hold the same purpose as CDP hearings — to provide the taxpayer with the opportunity to raise any relevant issues related to the unpaid tax, the lien, or the proposed levy, including the appropriateness of the collection action, collection alternatives, spousal defenses, and under certain circumstances, the underlying tax liability. IRM 5.19.8.4.3, *Equivalent Hearing (EH) Requests and timeliness of EH Requests* (Nov. 1, 2007). See generally IRC § 6330(c)(2).

41 The Collection Appeals Program (CAP) is an administrative program that allows a taxpayer to appeal certain collection actions or proposed collection actions and is available in a wider set of circumstances than a CDP hearing. IRM 8.24.1, *Collection Appeals Program and Jeopardy Levy Appeals, Collection Appeals Program (CAP)* (Dec. 2, 2014).

42 IRC § 7123 requires the IRS to establish procedures for nonbinding mediation on any issue unresolved after appeals procedures or an unsuccessful attempt to enter into a closing agreement or OIC.

43 TAS evaluates employee performance by looking at factors such as “substantive actions to move case towards resolution,” “initial actions taken timely,” and “follow-up actions timely.” TAS Case Quality Attributes (FY 2017).

44 TAS Report, *TAS Relief Rate by Primary Core Issue Code (PCIC) by Business Operating Division (BOD), FY 2017: October 10 through September 12* (Oct. 1, 2017).

45 See IRS, Joint Operations Center, *Snapshot Reports: Product Line Detail: Installment Agreement/Balance Due* (week ending April 22, 2017). See Most Serious Problem: *Telephones: The IRS Needs to Modernize the Way It Serves Taxpayers Over the Telephone, Which Should Become an Essential Part of an Omnichannel Customer Service Environment*, *supra*.

for the information to be cleared from our system.”⁴⁶ The IRS’s expedited decertification procedures may not provide relief for taxpayers close to the end of the 90-day period. After the taxpayer has met the expedited decertification criteria, the account has been correctly marked, and an IRS employee has received supervisory approval to submit the request form to the Collection Policy Passport Analyst, it can still take up to an additional ten days for the decertification to reach the Department of State.⁴⁷ Once the Department of State rejects the passport application, the applicant forfeits the application and processing fees (\$135 for new adult applicants) and must reapply.⁴⁸

Notices to taxpayers leave out important information related to their rights

Although the IRS provided draft versions of Notice CP 508C, *Passport Denied or Revoked Due to Serious Tax Delinquency*, to TAS for review, it rejected TAS’s suggestions and proceeded to publish the notice without negotiating TAS’s recommendations. Notice CP 508C provides only two options for taxpayers to prevent Department of State from denying, revoking, or limiting a taxpayer’s passport: full payment of the liability or alternate payment arrangements, such as an IA or OIC. The 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 CNC hardship. In response to TAS’s recommendation to include this information, the IRS stated that the information was not appropriate for the notice, it was included on irs.gov, and it is not included on the notice of levy or any other collection action letters.⁴⁹ Because the CP 508C is the only stand-alone notice the taxpayer receives regarding passport certification, it is the most appropriate place for informing the taxpayer about exceptions to certification. While including this information on irs.gov is helpful, failing to include it on the passport certification notice is inconsistent with the TBOR, which states taxpayers “are entitled to clear explanations of the laws and IRS procedures in all tax forms, instructions, publications, notices, and correspondence.”⁵⁰ The fact that the information does not appear in any other collection notices makes it even more crucial for the information to appear on the CP 508C.

The CP 508C notice also fails to inform taxpayers that if they have emergency or humanitarian reasons for needing to travel, the Department of State can make an exception and they should contact the Department of State directly. The IRS rejected TAS’s recommendation to add such language because the statute places the responsibility on the Department of State to administer this exception and Department of State sends out its own notice when denying a passport application.⁵¹ The fact that the Department of State administers this exception provides an argument for including this information: without explaining this exception and directing taxpayers to the Department of State, the IRS is inviting additional calls from taxpayers who believe the IRS may be able to help in these situations. In the age of limited resources, the IRS could save itself work by adding a single sentence to this notice. Additionally, the Department of State letter does not include any information about the emergency and humanitarian exception and could mislead a taxpayer experiencing an emergency to believe they must

46 Dept of State, Letter 695 – Debts, Clearance Holds, 06 - IRS – Seriously Delinquent Tax Debt (May 20, 2015).

47 To meet the criteria for expedited decertification, the taxpayer must have a pending application for passport or renewal, and either be traveling outside the United States within 45 days or reside outside the United States with an urgent need for a passport. IRM 5.19.1.5.19.9.1, *Expedited Decertification* (Jan. 8, 2018).

48 Dept of State, Letter 696, Denial – Not Entitled to U.S. Passport, 05- Denial – IRS (July 2016); Dept of State, United States Passport Fees, https://travel.state.gov/content/dam/passports/FeeChart/PassportFeesChart_TSG_January 2017.pdf (Jan. 2017).

49 TAS, Internal Management Document 5164, IRS response (Aug. 4, 2017).

50 IRS, Publication 1, *Your Rights as a Taxpayer* (June 2014).

51 TAS, Internal Management Document 5164, IRS response (Aug. 4, 2017).

work with the IRS.⁵² Another shortcoming of the Department of State letter is the lack of information about TAS. If a taxpayer has been trying to work with the IRS unsuccessfully, or is suffering from a significant hardship, the taxpayer should be directed to TAS, not the IRS. Although TAS did not have the opportunity to provide comments or suggestions on the Department of State passport denial letters, we will independently approach the Department of State to advocate for the rights of taxpayers subject to IRS's certification.

Taxpayers have a constitutional right to travel, and the IRS risks abridging this right by declining to adopt additional taxpayer protections, such as stand-alone pre-certification notices that provide taxpayers with the *right to challenge the IRS's position and be heard*.

CONCLUSION

When the IRS begins implementing the passport certification program in early 2018, taxpayers will be harmed from the moment they need to apply for a passport and are denied due to the IRS's certification. The statute itself provides some taxpayer protections, such as requirements for including passport language in CDP notices and exceptions for taxpayers who are actively paying as part of an IA or OIC. However, taxpayers have a constitutional right to travel, and the IRS risks abridging this right by declining to adopt additional taxpayer protections, such as stand-alone pre-certification notices that provide taxpayers with the *right to challenge the IRS's position and be heard*. Despite the broad discretion provided by Congress, the IRS has refused to exclude taxpayers suffering a significant hardship and actively working with TAS, and those pursuing administrative remedies not specifically listed in the statute. By going after taxpayers who are already actively trying to resolve their tax problems, the IRS fails to follow the spirit of the law and infringes on a taxpayer's *right to challenge the IRS's position and be heard* and *right to a fair and just tax system*.

52 The letter states "Neither this passport agency nor the Department of State has information concerning your seriously delinquent tax debt. You may contact the IRS at..." and "If you have urgent travel, you should contact the IRS at the number listed above immediately." Dept of State, Letter 695 – Debts, Clearance Holds, 06 - IRS – Seriously Delinquent Tax Debt (May 20, 2015).

RECOMMENDATIONS

The National Taxpayer Advocate recommends that the IRS:

1. Provide a stand-alone notice to all taxpayers 30 days (90 days for taxpayers outside the United States) prior to certifying their seriously delinquent tax debts that discusses the specific harm that will occur and outlines all options available to taxpayers to avoid or reverse certification.
2. Exercise its discretionary authority to exclude from passport certification any taxpayers who already have an open case with TAS at the time the IRS would otherwise certify their seriously delinquent tax debts.
3. Exercise its discretionary authority to exclude from passport certification any taxpayers who have requested certain alternative administrative remedies, including an Equivalent Hearing, a Collection Appeals Program (CAP) Appeal, or Post Appeals Mediation, and delay certification for these taxpayers until they receive a final determination from these programs.
4. Revise its procedures for expedited decertification to transmit the decertification to the Department of State within two business days after the Collection Passport Policy Analyst receives the approved request form.
5. Update Notice 508C to include information about all ways in which a taxpayer can become eligible for decertification and advise taxpayers to contact the Department of State if they have an emergency or humanitarian need to travel.