More IRS Guidance About Code Sec. 7345, Seriously Delinquent Tax Debts, and Passport Revocation: A Comprehensive Analysis

By Hale E. Sheppard

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I. Introduction

It began as a straightforward concept: the IRS is losing many millions of dollars in revenue each year because of individuals who are unwilling or unable to pay their tax debts; studies suggest that depriving tax debtors of their U.S. passports (thereby eliminating their ability to travel internationally) would serve as a strong payment incentive; following that logic, Congress enacted new Code Sec. 7345, which authorizes the denial or revocation of passports for individuals with seriously delinquent tax debts ("SDTDs"); and the IRS, in conjunction with the State Department, have been tasked with carrying out this legislation.

In the tax arena, what starts out as something relatively simple often ends up complicated and controversial. Code Sec. 7345 is no exception. The challenges here are largely the result of two things, an extended delay in implementing Code Sec. 7345 and a lack of comprehensive, authoritative guidance from the IRS.

This article identifies, organizes, and analyzes all available data at this time, including the language of Code Sec. 7345, its legislative history, the Internal Revenue Manual ("IRM"), and a series of IRS pronouncements with questionable precedential value. Such comprehensive coverage should help taxpayers and practitioners who will be affected by Code Sec. 7345 as implementation gets underway in 2018.

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II. Genesis for Passport-Deprivation Legislation

Depriving tax debtors of U.S. passports, which is not a new idea, enjoyed a resurgence thanks to a report by the Government Accountability Office ("GAO") in 2011.[1] 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 had issued passports to more than 224,000 individuals who collectively owed the IRS over $5.8 billion in federal taxes.[2] The GAO emphasized that this figure was seriously understated for various reasons and warned that "the 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."[3] 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.[4] As explained below, Congress took the GAO's advice by enacting Code Sec. 7345.

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III. Overview of Code Sec. 7345

Most taxpayers and practitioners center their attention on Code Sec. 7345, which was passed with little fanfare in December 2015 as part of the Fixing America's Surface Transportation ("FAST") Act.[5] An overview of this tax provision is set forth below.

A. 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 other words, if the IRS determines that an individual taxpayer has an SDTD, 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.

B. 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 already levied or has already filed a notice of federal tax lien ("NFTL") and the administrative rights under Code Sec. 6320, including the right to request a Collection Due Process ("CDP") hearing, have been exhausted by the taxpayer or have lapsed.[6] The key amount, $50,000, is subject to change. It increases annually for inflation and is rounded to the nearest multiple of $1,000.[7] As of January 1, 2018, the SDTD threshold, as indexed for inflation, has increased from the original $50,000 to $51,000.[8]

C. Statutory Exclusions from the Definition of SDTD

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; and (iv) A debt of an individual who has elected or requested innocent spouse relief under Code Sec. 6015.[9]

D. Decertification—Reversing 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 later 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.[10] Put differently, notice of "decertification" must be sent 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.[11]

E. Notifying the Taxpayer

Aside from notifying the Secretary of the Treasury of important events, the IRS must inform the taxpayer, too. In particular, the IRS must "contemporaneously" notify the taxpayer of any SDTD certification, decertification, and the right (described in "simple and nontechnical terms") to bring a civil suit to challenge the U.S. government, as explained below.[12]

F. 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.[13] The IRS website explains 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."[14]

In terms of remedies, if the relevant court sides with the taxpayer and rules that the certification was erroneous, then it can order the IRS to inform the State Department of this reality.[15] The legislative history makes it clear that this is the sole power of the court, and "[n]o other relief is authorized."[16] 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."[17]

IV. Other Statutory Changes Necessitated by Code Sec. 7345

In addition to creating Code Sec. 7345, the FAST Act also introduced or modified several other tax provisions, some of which are examined below.[18]

A. New Warnings in Collection 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 after its filing explaining in "simple and nontechnical 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 NFTL.[19] 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…"[20]

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.[21] 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…"[22]

B. 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, it added Code Sec. 6103(k)(11)(A), which states that, upon receiving from the IRS about an SDTD certification, the Secretary of the Treasury shall disclose to the State Department return information with respect to the relevant taxpayer.[23] Code Sec. 6103(k)(11)(B), also created by the FAST Act, restricts 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.[24]

C. Discretion for Emergencies and Humanitarian Reasons

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 a 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."[25]

Similarly, the FAST Act generally 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 new passport, to those individuals who are abroad when their passport expired, which only permits return travel to the United States.[26]

D. Insulating Government Workers from Liability

The FAST Act expressly lets off the hook the Secretary of the Treasury and the Secretary of State (and any of their designees) for any improper actions taken in reliance on an SDTD certification from the IRS. It 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."[27]

V. Initial Ambiguities and Questions

The FAST Act was enacted in December 2015, but guidance from the IRS did not emerge for approximately two years. This delay triggered lots of questions for taxpayers and their advisors. Below is a partial list of the initial uncertainties.

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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*."[28] Likewise, the legislative history states that an SDTD entails taxes and "interest and any penalties."[29]

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 individuals, but also corresponding penalties and interest. What remained murky, though, was whether "assessable penalties" would 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 Internal Revenue Code to the term "tax" shall include "assessable penalties."[30]

Let's see how this might play out, understanding that Code Sec. 7345 speaks to "federal tax liabilities" and that 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.[31] Form 5471 is filed as an attachment to the person's federal income tax return, which is a Form 1040 for individuals.[32] 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.[33] To make matters worse, 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.[34] This is true regardless of whether the taxpayer includes an eloquent, detailed, and persuasive statement of "reasonable cause" with the late Form 5471.[35]

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 was initially 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 $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.[36]

D. Can Partial Payment Eliminate SDTD Status?

Code Sec. 7345(c)(1) explains that the IRS must notify the State Department in several situations, including where an individual taxpayer "fully satisfies" the debt that triggered the certification. Uncertainty remained, and practitioners requested that the IRS issue regulations clarifying whether a taxpayer can rid himself of the SDTD taint "by making a payment that reduces the underpayment to less than $50,000."[37] For example, if a taxpayer owed the IRS a total of $60,000 and then paid $20,000 to reduce the balance to $40,000, would this suffice to eliminate SDTD status?

The IRS later made its point of view on this topic clear, explaining on its website that "the IRS will ***not*** reverse the certification because the taxpayer pays the debt below $50,000."[38] 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."[39]

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

Another preliminary uncertainty centered on whether a taxpayer can purge the SDTD stigma if the IRS places him in currently not collectible ("CNC") status.[40] 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.[41]

Certain tax professionals argued that, if the IRS (whose best interest is served by collecting the maximum amount of tax revenue 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.[42] 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)."[43]

F. How Will the Tax Court Handle Passport Cases?

The Tax Court prepared 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)." 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.[44]

G. Does Simply Applying for a Payment Alternative Suffice?

As explained above, Code Sec. 7345(b)(2) provides several "statutory exceptions" to the general definition of SDTD. Among those exceptions are (i) debts that a taxpayer is paying in a timely manner pursuant to an Installment Agreement, and (ii) debts that a taxpayer has satisfied through an Offer-in-Compromise. Practitioners identified the elephant in the room, which is that it can take the IRS 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 suggested 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 action by the IRS.[45]

H. Can Taxpayers Avoid 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 the Tax Court or proper U.S. district court.[46]

The major problem here is that the proverbial wheels of justice tend to turn slowly, even in the most efficient judicial bodies. Certain practitioners 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."[47] Accordingly, practitioners proposed the introduction of some sort of expedited administrative appeal before obligating a taxpayer to litigate.[48] 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 SDTDs for taxpayers.[49]

I. Do Penalty-Abatement Requests Preclude SDTD Status?

As explained above, the legislative history indicates that an SDTD is comprised of taxes, penalties, and interest, and the IRS has adopted this broad interpretation. Code Sec. 7345(b)(2) identifies various "statutory exceptions." Practitioners urged the IRS to exercise its discretion and not deny or revoke a passport in cases where (i) one component of the relevant SDTD is a penalty, (ii) the taxpayer has filed a proper penalty-abatement request, and (iii) the IRS has not yet responded to such request.[50]

J. Will the IRS Change Its Notification Process?

In an annual report to Congress, the National Taxpayer Advocate ("NTA") identified implementation of Code Sec. 7345 as one of the "most serious problems" in tax administration.[51] The NTA believes that the IRS is providing inadequate notice to affected taxpayers, which might violate the Taxpayer Bill of Rights and constitutional due process.

The NTA points out some flaws with the pre-levy notice. For example, 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."[52] Moreover, 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. In light of these perceived problems, the NTA lobbied for a different type of communication with tax debtors: "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]."[53]

K. Will Help from the Taxpayer Advocate Service Warrant an Exemption?

The NTA claims that, as of October 2017, there were some 800 taxpayers with SDTDs who had active cases with the Taxpayer Advocate Service ("TAS") to resolve tax issues.[54] The IRS did not initially exempt such individuals from SDTD status. From the vantage point of the NTA, the unwillingness of the IRS to exclude this category of taxpayers shows "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.[55]

The NTA asked the IRS to reconsider its position, and threatened action in the meantime designed to influence and expedite the IRS's decision-making process. Specifically, the NTA announced that, in order to "avoid this needless waste of resources," she planned to issue Taxpayer Assistance Orders ("TAOs") with respect to every taxpayer who was seeking help from the TAS in order to prohibit the IRS from making an SDTD certification to the State Department.[56] The NTA report described the action in the following manner:

> 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.[57]

VI. Trickling Guidance from the IRS

The FAST Act was passed in December 2015, the IRS did not issue any substantive guidance for approximately two years, and, logically, questions and complaints arose with taxpayers and tax professionals. The IRS has still not issued any type of regulations regarding Code Sec. 7345 (*i.e.*, proposed, temporary, or final), but it has released guidance in various forms as of May 2018. These are examined below.

A. New Language in IRS Collection Notices

This article previously explained that 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. Doubts mounted regarding how, exactly, the IRS would accomplish this task. These have now eased, with the IRS starting 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*.[58]

The IRS 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."[59]

B. News Release IR-2018-7

The IRS issued a news release in January 2018, putting taxpayers on notice that it will start implementing Code Sec. 7345 and "strongly encouraging" taxpayers with SDTDs to pay their liabilities to avoid losing their passports. The news release also explained, 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 put taxpayers on notice about imminent passport problems, but given its lack of details and use of conversational language, it did not clarify any of the substantive issues concerning Code Sec. 7345 pending since December 2015.

C. Notice 2018-1

At essentially the same time that it issued the news release in January 2018, 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." Notice 2018-1 then describes the limited courses of available action, including calling the number on the SDTD certification notice or filing a lawsuit with the Tax Court or U.S. district court.

D. Internal Revenue Manual

The IRS, in preparation to start the SDTD certification process, updated and expanded the IRM in December 2017. Much of the information inserted in the IRM merely consists of summaries of Code Sec. 7345 and its legislative history, but, thankfully, some new data appeared. Below is a discussion of new and/or important material from the IRM.

1. Guidance Added to the IRM About Components of an SDTD

- 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.[60]
- 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), the IRM states that an SDTD includes *all* tax assessments made under an individual's Social Security Number, including individual income taxes, trust fund recovery penalties, business taxes for which the individual is liable, and other civil penalties.[61]
- Equally noteworthy for taxpayers in the international arena, the IRM now 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…"[62]

2. Guidance Added to the IRM About Full Payment

- 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.[63]

3. Guidance Added to the IRM About "Statutory Exclusions"

- If a taxpayer misses the deadline for filing a CDP hearing request to challenge a post-lien notice or pre-levy notice from the IRS, or if the taxpayer is ineligible to demand a CDP hearing for some other reason, the taxpayer generally has the right to seek a so-called "Equivalent Hearing."[64] The most important difference between a CDP hearing and an Equivalent Hearing is that a taxpayer can seek judicial review by the Tax Court if he is dissatisfied with the determination made by the IRS during a CDP hearing, but lacks such right in the context of an Equivalent Hearing.[65] The updated IRM states that 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.[66]

4. Guidance Added to the IRM about "Discretionary Exclusions"

- The IRM announces the IRS's decision to exclude the following categories of tax debts from the definition of SDTD: (i) debt that is CNC status 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.[67] These exclusions are called "Discretionary Exclusions," and they supplement the existing "Statutory Exclusions" from the definition of SDTD.
- The IRM warns that Offers-in-Compromise or Installment Agreements that a taxpayer makes solely for purposes of delaying IRS collection actions will not fall within the "discretionary exclusions."[68]
- The IRS expressly reserves the right to alter course later, stating that "[t]hese discretionary exclusion categories are subject to change in the future."[69]

5. Guidance Added to the IRM about Notifying Taxpayers

- The IRM confirms that, while it does not delay issuing a 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.[70] In other words, the IRM indicates that the State Department intends to give taxpayers a 90-day grace period to straighten out tax payment matters with the IRS.

6. Guidance Added to the IRM about "Adjustments"—Penalty Abatements

- The IRM states that 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 debt below the $50,000 threshold.[71]
- The IRM 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 [SDTD] 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."[72]
- The IRM 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."[73]

7. Guidance Added to the IRM About "Adjustments"—Non-Filers

- The IRM 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 [SDTD] … The taxpayer is in the process of renewing his 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."[74]

8. Guidance Added to the IRM about Decertification

- The IRM admonishes that a taxpayer's account will remain as SDTD in many instances, including where the taxpayer requests a CDP hearing for tax periods that are not the basis for the SDTD certification. For instance, a taxpayer is already certified by the IRS as having an SDTD, a Revenue Officer later issues a prelevy notice to the taxpayer concerning 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.[75]

9. Guidance Added to the IRM about "Expedited" Decertification

- An "expedited" decertification process exists, but the IRM explains that the IRS will only grant it in the following limited circumstances: (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.[76]
- The IRS will only consider "expedited" decertification if the taxpayer pro-actively raises the issue of 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."[77]

10. Guidance Added to the IRM About Disputes

- The IRM 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 IRM, like the IRS's website, 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."[78]
- Nevertheless, the IRM explains that, before starting litigation, taxpayers can attempt to resolve disputed SDTD certification issues by (i) personally visiting a taxpayer assistance center, (ii) calling the number on SDTD certification notice, which will get routed to a centralized office in Philadelphia, or (iii) sending a written reply to the SDTD certification notice, which will also get forwarded to Philadelphia.[79]

E. Chief Counsel Notice 2018-005

Approximately four months after the IRS introduced the new language in the IRM regarding Code Sec. 7345, it released additional guidance, directed mainly toward IRS attorneys, in the form of a Chief Counsel Notice ("CC-2018-005"). It begins with a couple of obvious observations: This is a "new area of litigation" and "there are still many unanswered questions."[80] As one would expect at this stage, CC-2018-055 then devotes some time to repeating the same information derived from other sources, already discussed above, such as Code Sec. 7345, the legislative history, and various IRS authorities. Therefore, only the new data is examined below.

1. Sending Important Notices by Regular Mail

The notification process will not be a fast one. CC-2018-055 states that the IRS will notify taxpayers of SDTD certification "by regular mail" and, where appropriate, will also send notice of decertification "by regular mail."[81] The IRS does not mention the use of certified mail, overnight mail, or special delivery arrangements for taxpayers living abroad. This, of course, might trigger disputes regarding receipt of notification, proper delivery of service, timeliness of Petitions filed with the Tax Court or Complaints filed with U.S. district courts, *etc.*

2. No Access to the Appeals Office, Ever

CC-2018-055 clarifies that taxpayers challenging Code Sec. 7345 issues will never have a right to seek review by the Appeals Office. The IRS authorities reviewed above indicate that taxpayers have no ability to access the Appeals Office *before* filing starting litigation. CC-2018-055 builds on this notion, expressly stating that taxpayers will not get to present their side to the Appeals Office, even *after* getting started with the Tax Court or appropriate U.S. district court.

> Consistent with Notice 2018-01, after the assigned attorney files the Answer, the attorney will not refer the docketed case to the Office of Appeals … Appeals consideration of these cases under Rev. Proc. 2016-22 will not occur given the automated nature of the [IRS's] process for identifying modules and certifying individuals with seriously delinquent tax debts and because the determinations will have been verified by the assigned attorneys in answering the cases.[82]

3. IRS Perspective on Three Novel Issues

CC-2018-055 identifies and analyzes three issues the IRS anticipates taxpayers will raise, which are not explicitly addressed by Code Sec. 7345. First, the IRS concludes that taxpayers *cannot* challenge the amount of the liability during litigation because it is contrary to the relevant law and because it would restrain the collection of an assessed tax liability as "a liability determination in a Section 7345 proceeding would bind the [IRS] in other litigation."[83] Elsewhere in CC-2018-005, the IRS instructs its attorneys to attempt to swiftly dispense with Code Sec. 7345 cases where taxpayers question the underlying tax liability, by filing Motions to Dismiss for Failure to State a Claim or Motions for Summary Judgment on the Pleadings:

> [C]ertification actions are not the forum for addressing liability issues. If a petition is based solely on a claim that a certification should be reversed because the individual is not substantively liable for the seriously delinquent tax debt, a motion to dismiss for failure to state a claim or a motion for judgment on the pleadings may be appropriate. These motions may also be appropriate in cases in which the petition is solely based on frivolous arguments or requests for monetary damages or other remedies not available under Section 7345.[84]

Second, in terms of timing, CC-2018-055 indicates that taxpayers will have six years from the date on which the IRS issues a notice of SDTD certification, or six years from the date on which grounds for decertification exist, to bring an action in Tax Court or the appropriate U.S. district court.[85]

Third, the IRS addresses scope and standard of judicial review. To understand the IRS's position here, one must consult an earlier part of CC-2018-055. It states the following:

> The [IRS] *will rely on automated systems* to identify every module (electronic record of tax liability) on an individual's account with an unpaid assessed tax liability that is not statutorily excepted from the definition of seriously delinquent tax debt or otherwise in a category excluded from certification. Once all eligible modules have been identified, the systems will aggregate the amount of unpaid liabilities. If the total is more than the statutory threshold, the taxpayer will be identified as having [an SDTD], and a Transaction Code (TC) 971 Action Code (AC) 641 will post to each module.[86]

In light of the preceding, the IRS maintains that it bases SDTD certifications and decertifications solely on whether the tax modules in a particular taxpayer's account satisfy the criteria in Code Sec. 7345, meet a "statutory exclusion," or meet a "discretionary exclusion." This leads to the following conclusions, extremely favorable to the IRS on both points, which surely will be the subject of litigation in the future:

> Judicial review is thus *logically limited to the computerized records of those modules*. When review is confined to the administrative record, the standard of review is whether agency action was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." … *Accordingly, review should be limited to the [IRS's] records and whether the certification or failure to reverse the certification was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law*."[87]

4. *Impact of Classifying this a Coordinated Issue*

CC-2018-005 creates the impression that Code Sec. 7345 litigation should be straightforward, uncontroversial, and resolved rapidly most of the time *via* a long list possible Motions to be filed by the attorneys at the IRS (in Tax Court) or at the Department of Justice (in U.S. district court). Indeed, CC-2018-005 boldly predicts that "[m]ost actions under Section 7345(e) should be resolved using a motion for summary judgment."[88] Time will tell. In all events, swift resolution of matters is belied by another portion of CC-2018-005, where the IRS announces that *all* Code Sec. 7345 cases must be "coordinated" by the IRS National Office. Experience and logic dictate that, in situations where IRS and Department of Justice attorneys must have essentially all documents reviewed, changed, and approved by a committee at the IRS National Office before submitting them to the Tax Court or U.S. district court, the goal of quick resolution might be a pipedream.

F. Taxpayer Advocate Service Memo 13-0418-0001

This last item is not really guidance from the IRS, given that it was issued by the NTA. It is included here nevertheless because it provides insights into past actions by the IRS, pending issues, and potential modifications in the future.

1. *Unresolved Issues between NTA and IRS*

This article previously explained the showdown between the IRS and the NTA, with the latter announcing that she would issue TAOs to prevent the IRS from sending notices of SDTD certification to taxpayers with pending cases before the TAS. According to a memo issued by the NTA in April 2018 ("Advocacy Memo"), the TAS has prevailed, at least partially. After making good on her word to issue TAOs in approximately 750 cases, the IRS "eventually agreed" not to certify taxpayers who already had open files with the TAS in early 2018, when the IRS and State Department began implementing Code Sec. 7345.[89] However, the issue of whether *future* taxpayers who approach the TAS before receiving a notice of SDTD certification can avoid this fate remains unresolved with the IRS.[90]

The NTA recently published the Advocacy Memo to provide guidance to TAS employees who will be representing taxpayers with SDTDs. The NTA seems steadfast in her position that the ability to travel internationally is a "fundamental right" protected by the U.S. constitution and a "human right" recognized by the United Nations, and the IRS's attempt to deprive taxpayers working with TAS of the ability to travel ignores congressional intent, serves no purpose, and violates the Taxpayer Bill of Rights.[91] The NTA, in justifying the actions of the TAS, also explains that depriving taxpayers of a passport, even for a limited period, can produce "devastating effects," including, but not limited to, preventing taxpayers from visiting dying family members, obtaining urgent medical surgery abroad, and traveling for a job.[92]

2. *TAS Actions When SDTD Certification Does Not Exist*

The Advocacy Memo indicates that the approach of the TAS will depend on whether or not a taxpayer has already received a notice of SDTD certification. If a taxpayer who consults the TAS has a debt exceeding $50,000 (or the relevant amount depending on the year), then the TAS representative should confirm whether he is subject to SDTD certification, checking specifically to see if he falls within any of the "statutory exclusions" or "discretionary exclusions." In situations where the determination is affirmative, the TAS representative is instructed to confirm this conclusion with the IRS and elevate the case to the Local Taxpayer Advocate ("LTA"). Then, the LTA takes over by issuing a detailed TAO to the IRS, which is designed to prevent the issuance of the SDTD certification. In what appears to be a direct response to the IRS's unwillingness to issue taxpayers a specific notice about imminent SDTD certification beforehand, the Advocacy Memo expressly states that the LTA is not required to discuss the matter with the IRS before issuing a TAO "because the IRS, as a matter of policy, has refused to exclude these cases from certification."[93]

3. TAS Actions When SDTD Certification Exists

The mission of the TAS is different in situations where the taxpayer has already had his passport revoked as a result of an SDTD. Here, the Advocacy Memo states that the TAS representative has three tasks, namely, (i) determining the urgency of the taxpayer's need to travel internationally or to obtain a decertification for some other reason (such as passing a background check or security clearance that could jeopardize employment), (ii) resolving the SDTD by, for instance, showing that the taxpayer actually meets one of the "statutory exclusions" or "discretionary exclusions," having the liability recalculated to reflect that the taxpayer did not have an SDTD *via* audit reconsideration, penalty abatement, *etc.*, encouraging the taxpayer to enter into an Installment Agreement while working on a longer-term solution, and (iii) requesting decertification, confirming that this actually occurred, and ensuring that the IRS properly notifies the State Department.[94] The Advocacy Memo also instructs TAS representatives to issue a TAO, because an SDTD certification constitutes "extreme significant hardship," and to demand "expedited" decertification review, if the taxpayer has international travel planned within 45 days or has a passport application or renewal pending.[95] In addition to the actions aimed at the IRS, the Advocacy Memo directs TAS representatives to do more in cases where potential "emergency" or "humanitarian" concerns exist. Specifically, they are instructed to advise the tax debtor about the discretion that the State Department possesses, recommend that he directly contact the State Department to seek relief, and notify the attorney advisor to the NTA, such that she can also contact the State Department, if she obtains authority to do so.[96]

No comprehensive, authoritative set of rules exist at this time, and the IRS has shown its intention of systematically carrying out passport-deprivation actions starting in 2018.

VII. Conclusion

Because of the broad manner in which the IRS defines the term SDTD, because of the relatively low monetary threshold for reaching SDTD status, because of the ability of the IRS to identify "discretionary exclusions" and change them on a whim, because of the chance for the State Department to show subjective leniency in situations involving "emergency" or "humanitarian" issues, because taxpayers with an SDTD certification will never get an opportunity to potentially settle matters with the Appeals Office, because the NTA is poised to continue attacking the IRS, because the IRS has never issued any type of regulation (*i.e.*, proposed, temporary, or final) regarding Code Sec. 7345, and because the IRS indicated in the IRM and CC-2018-055 that it will adopt litigation positions that are aggressive and unfavorable to tax debtors, it is safe to assume that passport-related litigation in the Tax Court and U.S. district courts will be frequent in the coming years.

The IRS has attempted to cobble together guidance about Code Sec. 7345 through a combination of correspondence to taxpayers, postings to the IRS website, news releases, notices, updates to the IRM, and Chief Counsel Advisories. These sources, while helpful in understanding the IRS's perspective, are of dubious precedential value. No comprehensive, authoritative set of rules exist at this time, and the IRS has shown its intention of systematically carrying out passport-deprivation actions starting in 2018. Under these circumstances, individuals with significant tax debts would be wise to hire professionals experienced with tax collection procedures, tax litigation, and the tricky Code Sec. 7345 issues that continue to morph.

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ENDNOTES

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

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

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

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

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

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

7 Code Sec. 7345(f).

8 IRM §

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

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

11 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, December 1, 2015, at 532.

12 Code Sec. 7345(d).

13 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 Commissioner, and to provide a tie-breaker rule stating that the court first acquiring jurisdiction has sole jurisdiction (at 6).

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

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

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

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

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

19 Code Sec. 6320(a)(3) before enactment of the FAST Act.

20 Section 32101(b)(1) of the FAST Act; Section 6320(a)(3)(E).

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

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

23 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.

24 Section 32101(c) of the FAST Act.

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

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

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

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

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

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

31 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.

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

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

34 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).

35 IRM §21.8.2.20.1 (Jan., 10, 2014); *Failure to File the Form 5471—Category 4 and 5 Filers—Monetary Penalty*. IRS International Practice Unit (updated as of October 7, 2015).

36 *See, e.g.*, John M. Colvin and Claire H. Taylor, *Owe the IRS? Passports at Risk Under New Code Sec. 7345*, J. Tax Practice Procedure (Feb.–March, 2016); Carol M. Luttati, *Revocation or Denial of Passports for Seriously Delinquent Tax Debts*, 18(3) J. Tax Practice Procedure (June–July 2016), at 13.

37 Kenneth M. Horwitz, *TSCPA Seeks Proposed Regs on Denial of Passports for Unpaid Taxes*, Tax Notes Today, 2016, 134–117.

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

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

40 For general information about CNC status and related IRS procedures, *see* IRM §5.16.1—Currently Not Collectible (12-17-2015) and IRM §5.19.17—Campus Procedures for Currently Not Collectible and Offers in Compromise (12-7-2015).

41 IRM §1.2.14.1.14—Policy Statement 5-71 (11-19-1980). In this context, "hardship" exists if the levy action by the IRS prevents the taxpayer from meeting necessary living expenses.

42 *See* Kenneth M. Horwitz, *TSCPA Seeks Proposed Regs on Denial of Passports for Unpaid Taxes*, Tax Notes Today, 2016, 134–117; John M. Colvin and Claire H. Taylor, *Owe the IRS? Passports at Risk Under New Code Sec. 7345*, J. Tax Practice Procedure, February–March 2016.

43 John M. Colvin and Claire H. Taylor, *Owe the IRS? Passports at Risk Under New Code Sec. 7345*, J. TaxPractice Procedure, February-March 2016.

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

45 *See* Kenneth M. Horwitz, *TSCPA Seeks Proposed Regs on Denial of Passports for Unpaid Taxes*, Tax Notes Today, 2016, 134–117; John M. Colvin and Claire H. Taylor, *Owe the IRS? Passports at Risk Under New Code Sec. 7345*, J. Tax Practice Procedure, February–March 2016.

46 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 Commissioner, and to provide a tie-breaker rule stating that the court first acquiring jurisdiction has sole jurisdiction (at 6).

47 Kenneth M. Horwitz, *TSCPA Seeks Proposed Regs on Denial of Passports for Unpaid Taxes*, Tax Notes Today, 2016, 134–117.

48 Kenneth M. Horwitz, *TSCPA Seeks Proposed Regs on Denial of Passports for Unpaid Taxes*, Tax Notes Today, 2016, 134–117.

49 Kenneth M. Horwitz, *TSCPA Seeks Proposed Regs on Denial of Passports for Unpaid Taxes*, Tax Notes Today, 2016, 134–117.

50 Kenneth M. Horwitz, *TSCPA Seeks Proposed Regs on Denial of Passports for Unpaid Taxes*, Tax Notes Today, 2016, 134–117.

51 National Taxpayer Advocate, *2017 Annual Report to Congress* (January 2018).

52 National Taxpayer Advocate, *2017 Annual Report to Congress* (January 2018), at 77.

53 National Taxpayer Advocate, *2017 Annual Report to Congress* (January 2018), at 77.

54 National Taxpayer Advocate, *2017 Annual Report to Congress* (January 2018), at 11.

55 National Taxpayer Advocate, *2017 Annual Report to Congress* (January 2018), at 11.

56 National Taxpayer Advocate, *2017 Annual Report to Congress* (January 2018), at 11.

57 National Taxpayer Advocate, *2017 Annual Report to Congress* (January 2018), at 11.

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

59 IRS Publication No. 54 (2016), at 2.

60 IRM §5.1.12.27.2 (12-20-2017).

61 IRM §5.1.12.27.2 (12-20-2017).

62 IRM §5.1.12.27.2 (12-20-2017).

63 IRM §5.1.12.27.2 (12-20-2017).

64 Reg. §301.6320-1(i).

65 Reg. §301.6320-1(i); *J.R. Kennedy*, 116 TC 255, 263, Dec. 54,315 (2001).

66 IRM §IRM §5.1.12.27.2 (12-20-2017); IRM §5.1.12.27.3 (12-20-2017).

67 IRM §5.1.12.27.4 (12-20-2017). 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.

68 IRM §5.1.12.27.4 (12-20-2017).

69 IRM §5.1.12.27.4 (12-20-2017).

70 IRM §5.1.12.27.7 (12-20-2017).

71 IRM §5.1.12.27.8 (12-20-2017).

72 IRM §5.1.12.27.8 (12-20-2017).

73 IRM §5.1.12.27.8 (12-20-2017).

74 IRM §5.1.12.27.8 (12-20-2017).

75 IRM §5.1.12.27.8 (12-20-2017).

76 IRM §5.1.12.27.8 (12-20-2017).

77 IRM §5.1.12.27.8 (12-20-2017).

78 IRM §5.1.12.27.9 (12-20-2017).

79 IRM §5.1.12.27.8 (12-20-2017); IRM §5.19.1.5.19.10 (12-26-2017).

80 Chief Counsel Notice 2018-055 (April 5, 2018).

81 Chief Counsel Notice 2018-055 (April 5, 2018). *See also* Andrew Velarde, *IRS Tries to Assuage Concerns over Passport Revocation*, Tax Notes Today, Doc. 2018-20322 (May 14, 2018). This article confirms that the IRS intends to send pivotal notices about SDTD certification *via* "regular mail" and places the burden on taxpayers, saying that "taxpayers should ensure their addresses are properly updated to receive the notice."

[82] Chief Counsel Notice 2018-055 (April 5, 2018).
[83] Chief Counsel Notice 2018-055 (April 5, 2018).
[84] Chief Counsel Notice 2018-055 (April 5, 2018).
[85] Chief Counsel Notice 2018-055 (April 5, 2018).
[86] Chief Counsel Notice 2018-055 (April 5, 2018).
[87] Chief Counsel Notice 2018-055 (April 5, 2018).
[88] Chief Counsel Notice 2018-055 (April 5, 2018).
[89] Taxpayer Advocate Service, National Taxpayer Advocate memo to all personnel, regarding advocating for taxpayers facing passport revocation/denial. TAS-13-0418-0001 (April 26, 2018).
[90] Taxpayer Advocate Service, National Taxpayer Advocate memo to all personnel, regarding advocating for taxpayers facing passport revocation/denial. TAS-13-0418-0001 (April 26, 2018).
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[94] Taxpayer Advocate Service, National Taxpayer Advocate memo to all personnel, regarding advocating for taxpayers facing passport revocation/denial. TAS-13-0418-0001 (April 26, 2018).
[95] Taxpayer Advocate Service, National Taxpayer Advocate memo to all personnel, regarding advocating for taxpayers facing passport revocation/denial. TAS-13-0418-0001 (April 26, 2018).
[96] Taxpayer Advocate Service, National Taxpayer Advocate memo to all personnel, regarding advocating for taxpayers facing passport revocation/denial. TAS-13-0418-0001 (April 26, 2018). The Advocacy Memo states that "TAS is exploring if we can forward taxpayer requests for relief to the Department of State at the [NTA] level."