Pilla Talks Taxes

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UNAUTHORIZED DISCLOSURE PENALTIES BEEFED UP

Tax Pros Face Increased Risk for Misuse of Information

As the war on cybercrime heats up, Congress beefed up the penalties pointed at tax pros for the unauthorized disclosure of confidential client information. The increased penalties are provided in the Taxpayer First Act, enacted July 1, 2019.

Absolute Confidentiality

Code §6103 sets forth the confidentiality rules regarding a person's identifying information, tax return, and tax information. While there are numerous exceptions in the law (not relevant here), the rules are otherwise very strict. They apply both to officers or employees of the IRS, as well as those of other U.S. government agencies, including state and local agencies that gain access to tax information through sharing agreements with the IRS.

Moreover, the confidentiality provisions extend to other persons with access to or possession of one's confidential tax information. Section 6103(a)(3) states that "no other person (or officer or employee thereof) who has or had access to returns or return information" may disclose that information to any other person without the informed consent of the citizen whose information is at issue.

Tax pros most certainly fall into the pool of another person who "has or had access" to one's confidential tax information. That information does not become the "property" of the tax pro. Rather, clients retain their confidentiality rights despite having disclosed information to a pro for tax law compliance purposes.

Confidentiality of Identity

The confidentiality rules extend to one's identity. Per the language of §6103(b)(6), a taxpayer's identity is defined as follows:

> The term "taxpayer identity" means the name of a person with respect to whom a return is filed, his mailing address, his taxpayer identifying number (as described in section 6109), or a combination thereof.

In this issue

"Dan Pilla probably knows more about the IRS than the commissioner of the IRS." Associated Press.

Criminal and Civil Penalties

Code §7216 is the criminal penalty imposed for the unauthorized disclosure of tax information by a tax pro. It provides a criminal misdemeanor penalty of up to $1,000 and imprisonment of up to one year for any tax pro "who knowingly or recklessly," a) discloses any information furnished to him for the purposes of preparing a tax return, or b) uses the information for any purpose other than to prepare a return.

A corresponding civil penalty also applies. Section 6713(a) imposes a penalty of $250 per disclosure of tax information, with a cap of $10,000. Note that with the criminal penalty, a person can be convicted only if the IRS proves the unauthorized disclosure was done "knowingly or recklessly." That is to say, there must be a strong element of deliberateness to one's actions surrounding the disclosure. In a criminal case, the IRS bears the burden to prove beyond a reasonable doubt that the accused acted "knowingly or recklessly."

No such rules apply to the civil penalty. A mere disclosure, even inadvertent or not, due to the direct fault of the tax pro, can lead to the assessment of the civil penalty. Moreover, the burden of proof is on the tax pro to establish lack of liability for the civil penalty, rather than the requirement in a criminal case that the government prove its case beyond a reasonable doubt.

On top of all that, the penalty under §6713 is not subject to the deficiency procedures set forth in §6212. That is to say, the IRS need not mail a notice of deficiency to the tax pro, which affords pre-assessment Tax Court appeal rights, before assessing the penalty. It may be assessed without such a notice, immediately after which the IRS may begin collection. Those assessed with a penalty are certainly entitled to an appeal. However, it appears that nothing prevents the IRS from collecting even while the appeal is pending.

Enhanced Penalties in Connection with Identity Theft

The Taxpayer First Act enhanced the penalty under §6713 in cases where the unauthorized disclosure "is made in connection with a crime relating to the misappropriation of another person's taxpayer identity." See: §6713(b)(1). In that case, the penalty grows from $250 per disclosure to $1,000 per disclosure, and the cap is raised from $10,000 to $50,000.

The difference between subsections (a) and (b) is that (a) applies to any disclosure—even accidental or inadvertent disclosures—while (b) applies in cases where the tax pro is involved in criminal conduct related to ID theft. Moreover, the ID theft does not have to be tax-related. The enhanced penalty applies to any criminal ID theft case, "whether or not such crime involves any tax filing." See: §6713(b)(1).

Even more stringent, the provisions of subsection (a) and (b) apply separately. For example, suppose a tax pro's computers are hacked which results in an inadvertent disclosure of 100 client files. The IRS could impose the maximum penalty under §6713(a) of $10,000. But also assume that same tax pro is implicated in an ID theft scam and is discovered to have disclosed another 100 names and SSNs of his clients for unlawful purposes. In that case, the IRS can separately assess the maximum penalty under §6713(b) of $50,000. In this example, the total civil penalty exposure is $60,000. Of course, in the case of criminal behavior, the sanctions under §7216 also apply. As such, the tax pro could end up in jail.

You Must Protect Client Data

In 2013, The Treasury Inspector General for Tax Administration (TIGTA) stated that ID theft was an "epidemic" facing taxpayers. In 2013, the head of TIGTA testified during a Senate Committee hearing that ID theft scams "have become so prevalent that they are being called the 'crime of the 21st century'." See: Testimony of J. Russell George, TIGTA, April 10, 2013, p. 1.

The problem is not getting better. Since that comment, major banks and financial institutions were hacked, compromising the personal data of tens of millions of citizens. Even Intuit, the maker of Turbo Tax, and the IRS were hacked. The latter two events prove that nobody is immune to cybercrime.

Tax pros have to be extra cautious about protecting client data. You must take steps to ensure that your physical client files are as secure as possible, that employees have access to that data on only a need-to-know basis, and that your computer systems are protected with high-level pass-phrases and the latest firewall technology.

To help with all this, my new book, ***Dan Pilla's Small Business Tax Guide*** has a full chapter on dealing with this issue. Chapter 19 is entitled "17 Ways to Recognize and Avoid Being Victimized by the Crime of the Century." See the details below for ordering your copy of the book. We are now very close to going to press. We expect to be able to ship your book within thirty days or so.

CRUZ PUSHES TO INDEX CAPITAL GAINS

Amendment May be in Next Tax Law

Republican Senator Ted Cruz recently circulated an article in which he made the case for indexing capital gains to inflation. Many free market groups, including Steve Moore's Club for Growth, have long pushed to index capital gains to inflation.

There are numerous provisions of the tax code that have been indexed to the inflation rates for decades. The calculation of capital gains has never been indexed to inflation. The purpose for indexing under the tax law is to prevent inflation alone from being responsible for increasing one's taxes.

Inflation robs purchasing power from people as it reduces the value of the dollar. Just for example, the 10% tax rate for married filing jointly in 2018 started at taxable income of $19,050. For 2019, the same rate starts with taxable income of $19,400. The higher threshold protects citizens from being taxed on phantom gains realized only because of inflation.

In the case of capital gains, under the current rules, a person can face a tax liability even if he realized an actual economic loss on the sale of property. It happens because, as I stated, inflation robs purchasing power. For example, suppose a person purchased investment real estate twenty years ago for $50,000. He sells the property for $60,000. The capital gain (assuming all other factors are static) is $10,000.

In that case, the IRS taxes the $10,000 as "gain" on the transaction. However, assuming just a 2% rate of inflation over those twenty years, $60,000 realized today is actually worth considerably less than $50,000 was twenty years prior, at the time of the purchase. To illustrate, a 2% inflation rate reduces $60,000 in current dollars to $40,056 in value twenty years prior. So while the investor recovers his capital, that capital is actually worth less than it was at the time of the investment. And yet, $10,000 of the $60,000 realized from the sale is taxed as "gain."

In addition to indexing capital gains to inflation, the rates should be permanently fixed. They should not be subject to annual ebb and flow based upon whoever happens to control Congress. High capital gain rates result in capital lock-in, a situation in which appreciated property is not sold precisely because the owner wants to avoid high capital gains taxes. Lower rates result in much more economic activity, as owners are willing to sell assets, pay the tax, and reinvest elsewhere to take advantage of other opportunities. Permanently fixed low rates help to eliminate the "stop-start" economic activity we see with fluctuating rates.

Cruz has been pressuring Treasury Secretary Steven Mnuchin to index capital gains to inflation. The most recent volley came in the form of a letter to Mnuchin, dated July 29, 2019. Cruz claims that the move would encourage savings, investment and innovation. Mnuchin so far has not moved on the issue. Cruz encouraged Mnuchin to "use your authority to effect this change." Senator Cruz's letter is reproduced below.

The problem is I'm not sure Mnuchin has the legal authority to do it without congressional action. And whether an amendment changing the law will be made to the code likewise remains to be seen. I will keep my eye on the issue.

United States Senate

WASHINGTON, DC 20510

July 29, 2019

The Honorable Steven T. Mnuchin
Secretary of the Treasury
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Dear Secretary Mnuchin:

We urge you to use your authority to eliminate inflationary gains from the Department of the Treasury's calculation of capital gains tax liability. The United States economy has experienced historic levels of growth as a result of Congress and the current Administration's policies such as the Tax Cuts and Jobs Act. Implementing a policy of indexing capital gains to inflation will help to perpetuate these successes by encouraging savings, investment, and innovation so that everyday Americans can continue to enjoy better lives and livelihoods.

Over the last two-and-a-half years, the United States has experienced a surge in investment, jobs, and wages along with a stark decrease in unemployment and joblessness. Thanks to the current Administration's policies, business investment went from a disappointing -0.6 percent in 2015, to 7 percent in 2018. In spite of forecasts by the Congressional Budget Office in August 2016 that only 24,000 jobs would be created per month in 2018, pro-growth policies changed that trajectory and affected an actual average monthly creation of 223,000 jobs. As a result, jobless claims and unemployment reached 50-year lows. Rather than resting on these accomplishments, however, Congress and the Administration must both continue working to reduce impediments to economic growth.

Utilizing executive authority to define cost basis in a way that would remove the unfair inflation tax on savings and investment would be one such positive, pro-growth change the Administration could undertake. Currently, the methodology Treasury employs to calculate capital gains ignores gains resulting from inflation and ultimately hampers economic growth. When a taxpayer sells a capital asset, they pay taxes on their gains—the difference between the basis and the sale price. Under current rules, Treasury determines the basis by looking at the sticker price at the time of purchase without consideration of the inflation-adjusted cost of the asset in today's dollars.

This means, in some cases, a taxpayer can face a tax liability even after suffering an actual loss. Imagine, for example, a taxpayer who purchased one share of Coca-Cola stock in 1998 for $32.38. If they sold the stock earlier this year at $48.13, they would have a nominal gain of $15.76 and be taxed $3.75. The inflation-adjusted basis in today's dollars, however, would be $50.50. That means the taxpayer would have to pay $3.75 in taxes on a $2.38 loss. Even when a taxpayer experiences a real gain, the effective capital gains rate can easily double the statutory rate passed by Congress.

This treatment punishes taxpayers for the mere existence of inflation and is inherently unfair. Other tax provisions such as individual income brackets are rightly adjusted for inflation annually. Capital gains ought to receive the same equitable treatment.

In addition to maintaining equitable treatment, this action would have significant economic benefits. Indexing capital gains to inflation would unlock capital for investment, increase wages, create new jobs, and grow the economy, benefiting Americans across all income levels. Any decrease in the effective tax rate on capital gains incentivizes investors to realize gains on their investments, which opens up those dollars to new, more efficient allocations. According to findings by the nonpartisan Tax Foundation, the tangible result would be approximately $22 billion in added value to the American economy over the long run—a gain that would be realized by American workers through more jobs and higher wages. The change would increase after-tax incomes by 0.2 percent on average and create an additional 21,800 full-time equivalent jobs.

Congress and the administration have made tremendous progress since 2017 in reducing tax and regulatory burdens that have stood in the way of a resilient American economy. Indexing capital gains to inflation is another clear and sensible step on this path, and we encourage you to use your authority to effect this change.

Sincerely,

TED CRUZ
United States Senator

KEVIN CRAMER
United States Senator

JAMES M. INHOFE
United States Senator

MARSHA BLACKBURN
United States Senator

THOM TILLIS
United States Senator

PATRICK TOOMEY
United States Senator

JOHN BOOZMAN
United States Senator

JAMES LANKFORD
United States Senator

STEVE DAINES
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JOHN BARRASSO
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JOHN KENNEDY
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MIKE BRAUN
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CINDY HYDE-SMITH
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JOHN CORNYN
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RAND PAUL
United States Senator

RICHARD BURR
United States Senator

ROY BLUNT
United States Senator

ROGER F. WICKER
United States Senator

JAMES E. RISCH
United States Senator

BEN SASSE
United States Senator

TRANSFERRING TITLE TO ASSETS
What the IRS Looks at in OIC Cases
By Scott B. MacPherson

Suppose you have a federal tax debt you'd like to resolve through an Offer in Compromise (OIC). The problem is you also have substantial equity in large-value property such as real estate. You certainly do not want the IRS to take your property in a forced sale (forfeiture) but neither do you want to give it up in a voluntary sale to pay the tax. You'd like your OIC amount to be as low as possible. What can you do?

"Ah!" you declare in a moment of inspiration. "I'll just transfer title to someone else. I'll put the house in my wife's name."

As such, the property will not be yours anymore, so the IRS cannot seize it to satisfy your debt, nor can it be included in your OIC amount, right? The Tax Court case of *Hinerfeld v. Commissioner*, T.C. Memo. 2019-47 (May 2, 2019) explains why that probably will not work. I say "probably" because courts apply a multi-factor test, as explained below.

In *Hinerfeld*, husband was assessed trust fund liabilities for 8 out of the 12 quarters in years 2002, 2003, and 2004. He did not dispute the tax assessment. In February 2003, he executed a quit claim deed transferring title of his marital home to his wife. And, in total, she made $5 million of payments on his behalf. About half of the payments were made before, and about half were made after the conveyance. Sounds good, right?

The IRS mailed Mr. Hinerfeld a notice of tax lien. He requested a Collection Due Process Hearing at which he proposed an OIC as his collection alternative. His OIC did not include the value of the residence. Hinerfeld took the position that he did not own the property. The Settlement Officer, on the other hand, took the position that his wife was his "nominee," a concept I explain in a moment. As such, the house indeed belonged to husband. Therefore, according to the Settlement Officer, the house must be part of his Offer. Hinerfeld appealed that determination to the Tax Court.

On the question of whether wife was a nominee of husband with respect to ownership of their residence, the Tax Court looked to see whether New York State recognized the idea of a "nominee" under state law. The court did so because state law alone determines whether one owns property or rights to property to which a federal tax lien can attack.

The Court found such law in the case of *Nassar Family Irrevocable Trust v. U.S.*, 118 A.F.T.R.2d 2016-6007, 2016 WL 5793737 (S.D. NY 2016), aff'd sub nom. *U.S. v. Nassar*, 699 F. Appx. 46 (2nd Cir. 2017). The Tax Court borrowed the six-factor test from *Nassar* for deciding whether one person holds property as a nominee for another. The factors are:

> (1) whether inadequate or no consideration was paid by the nominee; (2) whether the property was placed in the nominee's name in anticipation of a lawsuit or other liability while the transferor remains in control of the property; (3) whether there is a close relationship between the nominee and the transferor; (4) whether they failed to record the conveyance; (5) whether the transferor retains possession; and (6) whether the transferor continues to enjoy the benefits of the transferred property. *Hinerfeld* at *10.

The Tax Court walked through the factors one at a time, concluding that five out of six favored a finding of nominee status. Regarding factor 1, payment, for example, the court explained that

> Petitioner has not established that Mrs. Hinerfeld paid any consideration for the Larchmont residence. None of the payments made by Mrs. Hinerfeld that petitioner and his attorney have, at various times, claimed to be the consideration for that transfer were made contemporaneously with the deed by which petitioner transferred to his wife title to the Larchmont residence. The record includes no written documentation that specifically identifies those payments as bargained-for consideration for Mrs. Hinerfeld's acquisition of the residence. *Id.* at *11.

Notably, state law required contracts for the sale of real estate to be in writing. There was no written contract, and worse, husband, wife, and husband's attorney gave conflicting stories regarding the terms of the alleged sale agreement and how wife's $5 million related to the conveyance. *Id.*

Factors 5 and 6 weighed heavily against the couple because "there is no evidence in the record that petitioner's transfer to his wife of title to the Larchmont residence significantly affected his possession or enjoyment of the property." *Id*. at *13.

The only factor favoring Hinerfeld was 4, regarding the recording of the conveyance. They did record the transfer.

The result was that the Tax Court sustained the rejection of the Offer in Compromise for the reason that Mr. Hinerfeld was the true owner of the equity in the real estate and that his wife was just his nominee. As such, his equity interest had to be included in the OIC amount (which it wasn't).

In short, if you try to avoid losing property by transferring ownership to someone else, expect the IRS to raise the nominee argument against you. And then you will have to present evidence to address each factor in the test as presented above.

Now, as to the question of defining what constitutes a "nominee," *Hinerfeld* does not describe or define the term in any useful way. The court instead merely referenced other cases. But the court in *Nassar*, *supra*, defined the term. It explained that, "Under the nominee doctrine, an owner of property may be considered a mere 'nominee' and thus may be considered to hold only bare legal title to the property." *Nassar* at *7. In that case, the property can be seized by the IRS in payment of a tax debt owed by the true owner.

As the *Nassar* court explained, the "critical issue" in the nominee analysis is that of control. *Id*. at *7. That is, who actually controls the property? A nominee finding does not require intent to defraud creditors or hinder collection efforts. As such, the IRS does not have to allege fraud. Rather, "The inquiry should be aimed at determining whether the taxpayer exercised active or substantial control over the property." *Id*. at *7. If the answer is yes, then the person with title on paper is deemed to be a "nominee" only, and the equitable or economic ownership of the property really belongs to the taxpayer.

Nassar concerned a wrongful levy suit brought by several parties, including a trust, all claiming that the IRS wrongfully levied specific bank accounts for the payment of taxes owed by Albert Nassar. (It was undisputed that Nassar owed back taxes.) The *Nassar* court noted that state law controls in determining the nature of the legal interest which a taxpayer has in a given property. However, at that time, New York State had not explicitly adopted any test for nominee ownership in tax cases. The court pulled from cases in California, Washington, Alabama, and Virginia, and found it "appropriate" to apply the test used *U.S. v. Evseroff*, 109 A.F.T.R.2d 2012-1957, 2012 WL 1514860 (E.D. NY 2012), a case from the federal court of New York. *Id*. at *8.

Referring then to the six factors listed above, the "undisputed evidence" at trial demonstrated that Nassar exercised complete control over the assets of the trust, and retained all of the benefits of ownership. The trust "owned" the apartment where he lived, for example, but only the fourth element, that of recording the conveyance of the apartment, weighed in Nassar's favor. He did record the conveyance.

That weight was partially offset, though, by the factual finding that it took him three months to record the transfer, and no transfer tax was paid. *Id*. at *9. As to the trust's bank account, Nassar was the sole signatory—emphasis on *sole*—and he testified that no one else had access to it. *Id*. at *11. The Court noted that

> Nassar himself conceded at his deposition that he has used money in the account to pay for all of his personal living expenses since he became ill in 2008, and acknowledged withdrawing approximately $200,000 from the account from April 2009 through July 2012 alone." *Id*.

The evidence regarding the other disputed bank accounts was similar; he was the sole signatory with exclusive access to the money, and he used the funds for his personal living expenses. *Id*. at *12. With that, the court held that the levy of the bank accounts and the foreclosure action against the apartment were not wrongful, because the purported "owners" were just his nominees.

U.S. v. Evseroff, the case from which *Nassar* borrowed the multi-factor test, concerned the remand of a Second Circuit appeal. The government sought to levy assets held by a trust in satisfaction of Evseroff's tax debts. The trial court held for Evseroff, the government appealed, and the circuit court reversed and remanded with an order that the trial court consider these three theories: fraudulent conveyance, alter ego, and nominee.

On remand the trial court held that the trust was Evseroff's nominee as to the real estate, but not as to the money. But the trust was also Evseroff's alter ego, and under the alter ego finding the government could seize both the money and the real estate. In so holding, the court explained the difference between the two theories.

The *Evseroff* court explained that the nominee theory focuses on the relationship between the taxpayer and the *property*, for the purpose of discerning whether a taxpayer has engaged in a sort of legal fiction by placing legal title to property in the hands of another while retaining all (or at least some) of the benefits of being the true owner. *Id*. at *9. Because the nominee theory focuses on control, not on intent, the government does not have to allege fraudulent intent.

The alter ego theory, in contrast, emphasizes the taxpayer's control over the *entity* that holds the property. *Id*. at *10. The two concepts are clearly distinguished by examining the question of control over the property versus control over the entity.

In *Evseroff* the IRS sought to seize a residence that, on paper, was owned by a trust. The evidence showed that the trust paid no consideration to Evseroff for the residence, the trustees were close friends and associates, and Evseroff continued to live there without paying rent. He paid the mortgage "and other expenses necessary to operate and maintain the property, including taxes, water, sewer charges, utilities, fuel, and insurance." And he remained the only named beneficiary of the flood and fire insurance policies. *Id*. at 11. The court concluded that, "These facts all indicate that Evseroff retained possession and benefitted from his use and occupancy of the Dover Street Residence much as he had when he held legal title to it." *Id*. at 11.

The number of factors the courts consider is not carved in stone. The analysis of the question of control is the point. This is seen, for example, in *Biogenesis Church, Inc. v. U.S.*, 120 A.F.T.R.2d 2017-6524, 2017 WL 5297903 (D. Mass. 2017), also a wrongful levy case. The court affirmed the levy of a religious foundation's bank account to pay an individual's federal tax debt. The court used eight factors, not six, for determining nominee ownership. The eight factors are:

> "1) the lack of consideration paid by the titleholder; 2) a close relationship between the taxpayer and the titleholder; 3) the control exercised over the property by the taxpayer while title is held by another; 4) the use and enjoyment by the taxpayer of the property titled to another; 5) lack of interference in taxpayer's use of property by the titleholder; 6) the use of property or funds titled to another to pay the taxpayer's personal expenses; 7) whether the taxpayer exercises dominion and control over the property, or treats it as if it belongs to him; 8) whether title was placed in the record owner's name as a result of or in anticipation of the taxpayer's liability. *Biogenesis* at *6.

Of note, the eighth factor is a question of intent (and the court recognized this, *id.*), but nominee theory is not about intent. The *Biogenesis* court got around that inconsistency by finding that, "any uncertainty in the record about George's intent in making the 2012 transfer is outweighed by consideration of the other factors that weigh, upon an undisputed record regarding same, in the United States' favor, that Biogenesis Church was George's fraudulent nominee." *Id*. at *6.

In summary, if your client controls some kind of asset (house, bank account, etc.), you must expect the IRS to take the position that the equity in the property is his—if not under the alter ego theory, then under the nominee theory. And when that happens you will have to discuss with your client factors such as those outlined above, and then decide whether a court is likely to agree with the IRS or not.

PLEASE NOTE: We will be discussing alter-ego/nominee issues at the 2019 Taxpayers Defense Conference in October. Do not miss it. See the details below.

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CHALLENGING A PASSPORT REVOCATION DETERMINATION
Tax Court Adds New Rules and Forms

The U.S. Tax Court has added a new Title to its rules. It is Title XXXIV, and it addresses the procedures for challenging the IRS's failure to reverse the certification under code §7345 that a person has a "seriously delinquent" tax debt. That section requires the IRS to "certify" to the Department of State (DOS) that a person with an outstanding debt of more than $50,000 is "seriously delinquent." The certification allows DOS to deny, revoke or limit one's passport. The certification is mandatory unless the citizen falls into one or more of the statutory exceptions. See: §7345(b)(2); see also 2018 Taxpayers Defense Conference, Session 3.

Section 7345(e) provides the right of judicial review of the certification. A person so certified may bring an action in either the U.S. district court or in the U.S. Tax Court. The action can be brought on one of two grounds:

1. The certification was erroneous in the first place, or
2. The IRS failed to reverse the certification once the citizen no longer met the definition of "seriously delinquent" as defined by law.

Under new Tax Court Rule 350,

> The Court shall have jurisdiction of an action to determine whether the certification was erroneous or whether the Commissioner failed to reverse the certification under Code section 7345(e) when the conditions of that section are satisfied.

Interestingly, the statute expresses no time period or limitation within which a suit may be filed. The IRS expressed a position on the matter in Chief Counsel Notice 2018-005. There the agency claims a person has six years from date of the certification in which to file an action. Where that time period comes from I'm not sure.

However, the guidance is silent as to what the limitation is when the IRS fails to decertify one who is no longer "seriously delinquent." Moreover, Tax Court Rules 350(b) (jurisdiction) and 351(a) (commencement of the action) are both silent as to the time in which the case may be filed. Only experience will tell whether the courts impose some kind of limitation. However, given that Congress was silent on the issue, I fail to understand how the courts could impose an arbitrary time restriction.

The Tax Court Petition

Tax Court Rule 351(b) sets forth the list of allegations that must be presented in the petition. The petition must be titled, "Petition for Certification or Failure to Reverse Certification Action Under Code Section 7345(e)." The specific allegations required by the rule are as follows:

1. The petitioner's name, State of legal residence, and mailing address as of the date the petition is filed,
2. The date of the notification of the certification,
3. Separately lettered statements explaining why the petitioner disagrees with the certification or the failure to reverse the certification
4. Separately lettered statements setting forth the facts upon which the petitioner relies to support his position,
5. A statement setting forth the relief sought, and
6. The signature, mailing address, and telephone number of the petitioner or counsel, as well as counsel's Tax Court bar number.
7. Finally, a copy of the notification of the certification must be provided as an attachment to the petition at the time of filing. Rule 351(b), Tax Court Rules of Practice.

The filing fee for this case is $60, which must be paid at the time of filing. The fee can be waived if the petitioner establishes to the satisfaction of the Court by an affidavit or a declaration containing specific financial information the inability to make the payment. Rule 351(c).

Court Review

The Tax Court review is confined to the administrative record. The court will determine the appropriateness of the IRS's actions of lack thereof based upon the evidence already in the record. Thus, I expect these cases will be resolved on motions for summary judgment rather than by trial. That means you must submit all relevant information to the IRS through the administrative process ahead of any Tax Court action.

The standard of review is whether IRS's action or lack thereof was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. The citizen cannot challenge the underlying liability in this action.

Tax Court Forms

In addition to the new rules, the court changed the standard, boilerplate petition available on its web site. Form 2, Petition, was changed to add a new box to the "check-the-box" jurisdiction claim on the form. The new form allows a person to simply check the box entitled, "Notice of Certification of Your Seriously Delinquent Federal Tax Debt to the Department of State." That will invoke the court's jurisdiction to hear such a case under Rule 350.

My First Time

I am anxiously looking forward to my first passport case. I will file a petition in the right case and happily report how the case progresses and turns out.

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