

Losing Your Passport

Quick-Take: In the past we have covered the ability of the IRS to ask the Secretary of State to deny, revoke or limit an individual's passport, based upon a certification that the individual has a seriously delinquent tax debt. [IRC 7345.] Once the IRS has determined that an individual has a seriously delinquent tax debt, it notifies the Treasury Secretary, who *shall* transmit the certification to the Secretary of State “for action with respect to denial, revocation, or limitation’ of the individual’s passport. The individual then has the right to challenge that certification in federal court in a civil action as either erroneous or on the grounds that the IRS failed to reverse the certification when required. [IRC 7345(e)(1).] The forfeiture of an individual’s passport was unsuccessfully challenged in a recent federal court decision.

Adams v. Commissioner of Internal Revenue, United States Court of Appeals for the District of Columbia, Issued December 6, 2024

Facts: Mr. Adams filed no federal income tax returns for tax years 2007 or 2009 through 2015. In 2020 the IRS concluded that Mr. Adams owed more than \$1.2 million in back taxes, interest, and penalties for those years. The IRS certified his back tax delinquency to the State Department. Once he learned of that certification, Mr. Adams then sued the IRS in the U.S. Tax Court, claiming that the IRS made procedural errors in assessing his underlying tax debt which, in turn, rendered its certification to the Department of State erroneous. Mr. Adams asserted five reasons the certification was in error: (i) the IRS never sent him documents by 1st class or certified mail; (ii) the IRS never sent him a letter giving him due process to challenge the assessed taxes; (iii) the \$1.2 million that the IRS claimed was owed was ‘completely baseless, arbitrary, and lacking in any foundation of fact’; (iv) the IRS did not perform all the legally required procedures necessary to assess the taxes; and (v) the certification was an “unconstitutional taking away of his right-to-travel.”

Tax Court: The Tax Court rejected Mr. Adam’s argument, finding that he had forfeited the opportunities that the Tax Code affords to contest his underlying tax liability. The Court also held that it lacked jurisdiction to review the Secretary of State’s discretionary determination of a seriously delinquent tax debt certification. Finally, the Court found that it did not have jurisdiction to review Mr. Adams’s constitutional right-to-travel.

Court of Appeals: The D.C. Circuit Court found that the Tax Court had correctly concluded that Mr. Adams's IRC 7345 challenge was foreclosed (or forfeited.) Mr. Adams's seriously delinquent tax debt was not erroneous within the meaning of IRC 7345(c). A **seriously delinquent tax debt** is defined by the statute. The statute requires a finding that a tax liability: (i) has been assessed; (ii) in an amount greater than the adjusted minimum threshold amount of \$53,000 (this amount is subject to annual COLA adjustments); (iii) a notice of lien has been filed, as to which the taxpayer's administrative rights under IRC 6320 have lapsed; or (iv) a levy is made by the IRS pursuant to IRC 6331. All of Mr. Adams's technical arguments that the debt must be 'legally enforceable' were without merit since the IRS notices of lien and the intent to levy informed him of his right to collection due process hearings, to which he could have objected, but he forfeited those opportunities because he took no action to timely contest the tax liens or the underlying deficiency determinations. Sit on your rights and lose your passport.

Conclusion: The State Department's right to revoke an individual's passport came as part of the 2015 Fixing America's Surface Transportation (FAST) Act. Its obvious intent is to provide an incentive to individuals with large, delinquent tax debts to pay them without further delay. There have been few reported court cases that deal with this 'remedy' but the *Adams* decision is a helpful reminder that ignoring IRS liens and notices of levy can result in an abrupt forfeiture of a legally issued passport.

If you would like to read additional missives, [click here](#).