

# Passport revocation, denial and limitation: The FAST Act

“Fixing America’s Surface  
Transportation”

John Richardson – March 2, 2016

Mark Twain on patriotism: Loyal to  
country

**always. Loyalty to the  
government when it  
deserves it.**



**Mark Twain**

# You gotta worry about Americans abroad!

“My concern is for the toxic cocktail on the way. It’s comprised of some or all of the following ingredients: overseas Americans who don’t understand the tax impact of many foreign investments (think foreign mutual funds and PFIC; CFC and Subpart F inclusions etc.), overseas Americans who don’t understand they need to file US tax returns even though they pay tax in a foreign country or fall below FEIE thresholds, FATCA reporting of US owned foreign accounts, abominable mail service / non-delivery of mail in many foreign countries (you know, the letter from IRS stating you have a tax deficiency or that it’s slapped on a nice fat lien ....), expats who move from country to country every few years and don’t notify IRS of the address changes.... Makes for a deadly mix the ultimate result of which might be revocation of the US citizen’s passport.”

Virginia La Torre Jeker

# You gotta worry because ...

With the stroke of a pen, President Obama has “signed the last nail in the coffin of Americans abroad.”

How can they survive without having a passport?

# When it comes to mobility and passports ...

German citizens with German passports have the greatest potential for mobility. The U.S. passport if you CAN GET one and if you CAN KEEP one, is NOT the world's best passport.

CNN – March 1, 2016

A passport can be for the purpose of:

1. Denying travel to foreign nations, or;
2. Facilitating travel to foreign nations.

# U.S. citizens are required to:

1. Enter the U.S. with a U.S. passport; and
2. Leave the U.S. on a U.S. passport.

Therefore, the passport can be used as an instrument of control – a document to keep people out OR to keep people in. (As Ron Paul said: The wall could be used to keep people in.)

# The talented Mrs. Shipley

“Career civil servant Ruth B. Shipley acted as chief of the Passport Division of the U.S. State Department from 1928 to 1955. Shipley personally reviewed every passport application, and prior to 1958 Supreme Court decision, her actions were subject to no judicial review. Shipley denied passports to Paul Robeson, Arthur Miller, Linus Pauling, and “many other” Americans during the 1950s.”



# Passport revocation as a means to enforce payment of child support

2002 - Eudene Eunique was denied a passport because she was severely in arrears on her child support payments. She brought an action for declaratory and injunctive relief on the theory that the statute and regulation authorizing that denial were unconstitutional. *See* 42 U.S.C. § 652(k); 22 C.F.R. § 51.70(a)(8). The district granted summary judgment against her, and she appealed. WE AFFIRM. (U.S. Court of Appeals – 9<sup>th</sup> Circuit.)

# Passport revocation as a means to enforce the payment of taxes

“The IRS is very aware of the potential for using the US passport as an effective means of increasing the collection of unpaid US taxes. The Government Accountability Office (GAO) issued a report to Congress on this very matter. It noted that a significant amount of unpaid federal taxes owed by individuals who were issued a US passport within the past four years had been outstanding for several years. **The report urged that Congress consider legislation using the US passport as an enforcement tool in helping generate substantial collections of unpaid federal taxes and to increase tax compliance.** The GAO Report, Gov’t Accountability Office Report of March 2011, can be accessed [here](#).”

# Legislation American style A: Hitchhiker legislation

A. Massive bills with unrelated sections – the vast majority are omnibus bills – few Congressmen even understand what they are signing

- FATCA
- Passport Revocation

Representative Mia Love of Utah has recently proposed legislation to restrict this practice.

<http://www.americanews.com/story/politics/2016/01/27/congresswoman-wants-limit-bills-one-subject-time-stop-last-minute#article-fb-comments>

Representative Love, clearly understands the “Trojan Horse” nature of “hitchhiker legislation”!

# Legislation American Style B: The Revenue Offset

Revenue Offset Provisions – bills must explain how it will pay for the spending.

Revenue Offsets include:

- FATCA
- Passport Revocation

# “Fix America’s Surface Transportation”

The “passport revocation” provision: The “Trojan Horse” soldier in the FAST Act.

***TITLE XXXII—OFFSETS***

***SUBTITLE A—TAX PROVISIONS***

***SEC. 32101. REVOCATION OR DENIAL OF PASSPORT IN  
CASE OF CERTAIN UNPAID TAXES.***

*(a) In General- Subchapter D of chapter 75 of the Internal Revenue Code of 1986 is amended by adding at the end the following new section:*

# Fixing America's Surface Transportation

Section 3201 of the FAST Act amends the Internal Revenue Code by adding a new S. 7345 to Subchapter D of chapter 75. Chapter 75 is the section of the Internal Revenue Code that prescribes: “**CRIMES, OTHER OFFENSES AND FORFEITURES**”. Note also that Congress can keep adding new sections. For example, S. 7346, etc. this year, S. 7347 next year. (A “Guantanamo Bay” legislative prison perhaps?)

# Title 26 General Outline



[U.S. Code](#) > Title 26

## U.S. Code: Title 26 - INTERNAL REVENUE CODE

Current through Pub. L. [114-38](#). (See [Public Laws for the current Congress](#).)

**US Code**

**Notes**

- [SUBTITLE A - Income Taxes \(§§ 1 to 1564\)](#)
- [SUBTITLE B - Estate and Gift Taxes \(§§ 2001 to 2801\)](#)
- [SUBTITLE C - Employment Taxes \(§§ 3101 to 3511\)](#)
- [SUBTITLE D - Miscellaneous Excise Taxes \(§§ 4001 to 5000C\)](#)
- [SUBTITLE E - Alcohol, Tobacco, and Certain Other Excise Taxes \(§§ 5001 to 5891\)](#)
- [SUBTITLE F - Procedure and Administration \(§§ 6001 to 7874\)](#)
- [SUBTITLE G - The Joint Committee on Taxation \(§§ 8001 to 8023\)](#)
- [SUBTITLE H - Financing of Presidential Election Campaigns \(§§ 9001 to 9042\)](#)

# Internal Revenue Code - Subtitle F

US Code

Notes

- [CHAPTER 61 - INFORMATION AND RETURNS \(§§ 6001 to 6117\)](#)
- [CHAPTER 62 - TIME AND PLACE FOR PAYING TAX \(§§ 6151 to 6167\)](#)
- [CHAPTER 63 - ASSESSMENT \(§§ 6201 to 6255\)](#)
- [CHAPTER 64 - COLLECTION \(§§ 6301 to 6361\)](#)
- [CHAPTER 65 - ABATEMENTS, CREDITS, AND REFUNDS \(§§ 6401 to 6432\)](#)
- [CHAPTER 66 - LIMITATIONS \(§§ 6501 to 6533\)](#)
- [CHAPTER 67 - INTEREST \(§§ 6601 to 6631\)](#)
- [CHAPTER 68 - ADDITIONS TO THE TAX, ADDITIONAL AMOUNTS, AND ASSESSABLE PENALTIES \(§§ 6651 to 6751\)](#)
- [CHAPTER 69 - GENERAL PROVISIONS RELATING TO STAMPS \(§§ 6801 to 6808\)](#)
- [CHAPTER 70 - JEOPARDY, RECEIVERSHIPS, ETC. \(§§ 6851 to 6873\)](#)
- [CHAPTER 71 - TRANSFEREES AND FIDUCIARIES \(§§ 6901 to 6905\)](#)
- [CHAPTER 72 - LICENSING AND REGISTRATION \(§§ 7001 to 7012\)](#)
- [CHAPTER 73 - BONDS \(§§ 7101 to 7103\)](#)
- [CHAPTER 74 - CLOSING AGREEMENTS AND COMPROMISES \(§§ 7121 to 7124\)](#)
- [CHAPTER 75 - CRIMES, OTHER OFFENSES, AND FORFEITURES \(§§ 7201 to 7344\)](#)
- [CHAPTER 76 - JUDICIAL PROCEEDINGS \(§§ 7401 to 7491\)](#)
- [CHAPTER 77 - MISCELLANEOUS PROVISIONS \(§§ 7501 to 7528\)](#)
- [CHAPTER 78 - DISCOVERY OF LIABILITY AND ENFORCEMENT OF TITLE \(§§ 7601 to 7655\)](#)



# Deconstructing S. 7345 – 1: Linking passports to tax arrears - General

(a) In General- If the Secretary receives certification by the Commissioner of Internal Revenue that an individual has a SERIOUSLY delinquent tax debt, the Secretary SHALL transmit such certification to the Secretary of State for action with respect to DENIAL, REVOCATION, or LIMITATION of a passport pursuant to section 32101 of the FAST Act.

# Deconstructing S. 7345 – 2: Passport DENIAL - MANDATORY

(A) IN GENERAL- Except as provided under subparagraph (B), upon receiving a certification described in section 7345 of the Internal Revenue Code of 1986 from the Secretary of the Treasury, the Secretary of State SHALL NOT issue a passport to any individual who has a seriously delinquent tax debt described in such section.

# Deconstructing S. 7345 – 3: Passport REVOCATION - PERMISSIVE

## (2) REVOCATION-

(A) IN GENERAL- The Secretary of State may revoke a passport previously issued to any individual described in paragraph (1)(A).

# Deconstructing S. 7345 – 4: Passport LIMITATION - PERMISSIVE

(B) LIMITATION FOR RETURN TO UNITED STATES- If the Secretary of State decides to revoke a passport under subparagraph (A), the Secretary of State, before revocation, may—

- (i) limit a previously issued passport only for return travel to the United States; or
- (ii) issue a limited passport that only permits return travel to the United States.

# A “seriously delinquent” tax debt includes ...

- (1) IN GENERAL- For purposes of this section, the term ‘seriously delinquent tax debt’ means an unpaid, legally enforceable Federal tax liability of an individual—
- (A) which has been **assessed**,
  - (B) which is greater than \$50,000, and
  - (C) with respect to which—
    - (i) a notice of **lien** has been filed pursuant to section 6323 and the **administrative rights** under section 6320 with respect to such filing have been exhausted or have lapsed, or
    - (ii) a **levy** is made pursuant to section 6331.

Does the \$50,000 include interest and penalties?

Yes!

FATCA Form 8938 and IRC S. 6038D(d):

<https://www.law.cornell.edu/uscode/text/26/6038D>

FATCA, America's new tool for Passport Confiscation!

# The new reality for Americans abroad

Q. What is the defining feature of an American living abroad?

A. He/she lives live “In the penalty box”.

<https://www.taxconnections.com/taxblog/part-1-life-in-the-penalty-box-u-s-citizens-and-green-card-holders-living-outside-the-us/>

# A “seriously delinquent” tax debt does NOT include (we are reasonable ...)

(A) a debt that is being paid in a timely manner pursuant to an agreement to which the individual is party under section 6159 or 7122, and

(B) a debt with respect to which collection is suspended with respect to the individual—

(i) because a due process hearing under section 6330 is requested or pending, or

(ii) because an election under subsection (b) or (c) of section 6015 is made or relief under subsection (f) of such section is requested.



# I'm an American! I have rights!

1. The simple fact is that there are a large number of steps that must be cleared before the tax debt can be used to impact entitlement to a U.S. passport.
2. I expect a very slow rollout. I suspect it will take a long time before the IRS begins the process of passport revocation.
3. Old Russian saying: **“The days go slowly and the years go quickly!”**

# On it's own initiative, the State Department can revoke or DENY...

(f) Revocation or Denial of Passport in Case of Individual Without Social Security Account Number-

(1) DENIAL-

(A) IN GENERAL- Except as provided under subparagraph (B), upon receiving an application for a passport from an individual that either—

(i) does not include the social security account number issued to that individual, or

(ii) includes an incorrect or invalid social security number willfully, intentionally, negligently, or recklessly provided by such individual,

the Secretary of State is authorized to deny such application and is authorized to not issue a passport to the individual.

# On it's own initiative, the State Department can REVOKE or deny...

## (2) REVOCATION-

(A) IN GENERAL- The Secretary of State may revoke a passport previously issued to any individual described in paragraph (1)(A).

(B) LIMITATION FOR RETURN TO UNITED STATES- If the Secretary of State decides to revoke a passport under subparagraph (A), the Secretary of State, before revocation, may—

- (i) limit a previously issued passport only for return travel to the United States; or
- (ii) issue a limited passport that only permits return travel to the United States.

# Americans abroad: Your tax return is complicated – Consider getting help

“If you’re a U.S. taxpayer living outside the country or otherwise have non-U.S. income or assets of any sort, don’t assume that the preparation of your tax return is easy and don’t assume that your tax preparer knows what they’re doing. (Note: we don’t do tax preparation.)

If you have any of the following, you might consider your return to be somewhat complicated: A foreign pension, non-U.S. investment funds, ownership of a foreign entity (company, partnership, trust, etc.), signatory or other authority over a foreign financial account, a foreign inheritance, expatriate benefits from your employer, stock options, earned income more than around \$100,000 a year in a foreign country, foreign bank account balances over \$10,000, foreign financial assets over \$50,000, a non-citizen spouse, foreign life insurance, mortgage in a foreign currency, sale or rental of real estate outside the U.S., self-employment income and more.”

# Just when you thought it was safe to stop worrying ...

If the IRS is bugging you about your unpaid taxes, what if it is a private debt collector acting for the IRS? That is now a reality, since President Obama has signed the 5-year infrastructure spending Bill. It added private IRS collectors as part of H.R. 22 – Fixing America’s Surface Transportation Act, the “FAST Act.” What does a private IRS have to do with highway funding, you might ask? The answer is money.

<http://www.forbes.com/sites/robertwood/2015/12/07/irs-private-debt-collectors-are-now-legal-10-things-you-should-know/#decec9efc685>

Robert Wood – December 7, 2015

# Private debt collectors and Americans abroad?

2. Increase the number of people wanting to renounce U.S. citizenship.

Would you say that these “private debt collectors” are the equivalent of “bounty hunters”?

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**Robert W. Wood** 2 months ago

**AUTHOR**

Boy, that is an interesting question. To my

# Private debt collectors and Americans abroad?

Who would thought that the U.S. government  
would have dusted off Mr. FBAR, Ms. PFIC and  
Uncle FATCA?

What's wrong with a few phone calls to remind  
you of your tax debts?

# Discussion Topic 1

What exactly do Americans abroad need a passport for anyway?

Does it matter what country they live in?



# Discussion Topic 2: Advising Americans abroad in a “passportless world”

1. On the one hand, the way to ensure you have no tax debts is to file your U.S. taxes.
2. On the other hand, tax debts can become known only by filing U.S. taxes?

Streamlined? OVDP? Obey the law and simply file your returns?

# Discussion Topic 3

What kinds of activities should Americans abroad avoid in order to minimize the risk of tax arrears?

# Discussion Topic 4 – Second passport a luxury or necessity for Americans?

Those without a second passport need to get one quickly.

The good news is that Americans abroad have already escaped. As I have said over and over:

All Homeland Americans need do to see their future is look at how the U.S. Government treats Americans abroad!

Robert, I would have to think with your understanding of these issues that you might be doing some careful thinking about your own situation.

Thanks for the update – keep up the great work!

# Discussion Topic 5 – To think the unthinkable ...

“In the former Soviet Union and Maoist China, citizens were prevented from free travel **within their countries**, as well as the freedom to leave their countries.

On December 4, 2015, while the media whipped Americans into a frenzy over the San Bernardino mass shooting of 2 days ago, Obama quietly signed into law H.R. 22, a bill that would make the former Soviet Union and every totalitarian state proud.”

- Dr. Eowyn – December 13, 2015

<http://fellowshipoftheminds.com/2015/12/13/new-law-hr-22-if-you-owe-taxes-your-passport-will-be-confiscated/>

# Discussion 6 – Speaking of travel within their countries ...

“Yes, it’s true, the [IRS power to revoke passports was signed into law](#). Think you only need a passport to board an international flight? In 2016, some fliers better have one to fly domestic, which means they had better be paying their taxes. It now looks as though [your passport could be cancelled if you owe the IRS](#). The [Real ID Act](#) created a national standard for state-issued IDs. It hits air travel in 2016. Some states initially refused to comply, fearing that the feds would make a national database of citizens. Others cited [high administrative costs](#) and a 50% increase in fees for drivers. Most states are OK, but millions in Louisiana, Minnesota, New Hampshire and New York [may have to start using a passport to fly domestically](#).”

- Robert Wood – November 25, 2015

<http://www.forbes.com/sites/robertwood/2015/11/25/passports-required-for-domestic-travel-in-2016-but-irs-can-revoke-passports-for-taxes/#3d549c455f06>

# A bit of naming trivia!

The FAST Act was/is Bill HR 22 of the 114<sup>th</sup> Congress. Which proposed name do you like best?

- 1. Hire More Heroes Act of 2015**
- 2. DRIVE Act**
- 3 . Surface Transportation Reauthorization and Reform Act of 2015**
- 4. FAST Act**

# In closing ...

It's an election year in the United States.

Vote **early** and vote **often**!

John Richardson

<http://www.citizenshipsolutions.ca>