

The University of San Diego School of Law –  
Chamberlain International Tax Institute

***International IRS & SAT Collection Enforcement – (cross-border tax judgments)***



***Colaboración administrativa entre autoridades fiscales de México y de los EUA, y mecanismos para el cobro de créditos fiscales en casos de contribuyentes con activos en ambos países***

**February 19th & 20th, 2024**

**Mérida | Yucatán | México**

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## ***International IRS & SAT Collection Enforcement – (cross-border tax judgments)***

- *Mae Lew, IRS Office of the Associate Chief Counsel, International (Washington D.C.)*
- *Leo Unzeitig, Chamberlain Hrdlicka (San Antonio)*
- *Daniel Price, Law Offices of Daniel N. Price, PLLC (San Antonio)*

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## *Speakers*



### **Mae Lew**

*IRS Office of the Associate Chief Counsel,  
International (Washington D.C.)*

[mae.j.lew@irscounsel.treas.gov](mailto:mae.j.lew@irscounsel.treas.gov)

+1 202.317.4957



### **Leo Unzeitig**

*Chamberlain Hrdlicka (San Antonio)*

[leo.unzeitig@chamberlainlaw.com](mailto:leo.unzeitig@chamberlainlaw.com)

+1 210.278.5814



### **Daniel Price**

*Law Offices of Daniel N. Price, PLLC (San Antonio)*

[info@pricetaxlaw.com](mailto:info@pricetaxlaw.com)

+1 210.960.2920

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## *DISCLAIMER*

These materials were not prepared by the government participants.

This presentation and the views expressed therein reflect the unofficial, individual views of the individual speakers, and do not necessarily represent Department of Justice or IRS policy.

# Objectives

Collection devices available to the Government to collect outstanding taxes and penalties from assets located abroad

Obtaining information located offshore under tax treaties and other exchange of information agreements to assist in enforcement

Available defenses and best practices for pursuing collection alternatives

# Defining the International Case

The United States taxes its citizens and residents on their worldwide income.

An international case involves a taxpayer or business having a current address outside of the United States.

# IRS Administrative Collection

There are several administrative and judicial collection tools available to reach offshore assets in international cases. The collections tools that will be discussed include:

- Levies on domestic branch of a financial institution;
- Wage Levy;
- Administrative offsets of federal benefits;
- Customs Orders and Prevent Departure Orders; and
- Mutual Collection Assistance Requests.

# Steps for the Revenue Officer

The first step in the administrative collection process is contacting the taxpayer.

A taxpayer who resides outside the United States may not be aware of outstanding federal tax liabilities if the address on record for the taxpayer is outdated or otherwise incorrect.



# Treasury Enforcement and Communication System

- To help the IRS personnel locate and contact those taxpayers who routinely travel to the United States, the IRS uses the Treasury Enforcement and Communication System (TECS) administered by the Department of Homeland Security

## Treasury Enforcement Communications System (TECS)

- “TECS is a database maintained by the Department of Homeland Security (DHS), and it is used extensively by the law enforcement community. It contains information about individuals and businesses suspected of, or involved in, violations of federal law.” I.R.M. 5.1.18.13(1).

# Treasury Enforcement Communications System (TECS) cont'd.

Revenue officers can request that taxpayers with delinquent accounts be entered into TECS, and the Department of Homeland Security will then place the taxpayer on the DHS lookout indicator list.

Customs and Border Protection (CBP) will notify the TECS Coordinator when ICE becomes aware that a balance due taxpayer on TECS is arriving in the U.S. by sending the TECS coordinator some or all of the following:

- taxpayer's address while in the U.S.;
- Nature of the visit; and
- any other available travel and/or asset information

# TECS Lookout Indicator List

International and domestic taxpayers can be placed on the TECS lookout indicator list.



Information derived from DHS can facilitate contact with the taxpayer or discovery of asset information which may facilitate payment of the outstanding liability.



# Notice Sent to Taxpayers – Letter 4106

Dear [Name]:

This letter is to inform you that we have notified the Department of Homeland Security that, according to our records, you still owe the federal taxes as provided by law. **We have computed the amount(s), plus penalty and interest to 30 days from the date of this letter.**

Form Number	Tax Period	Unpaid Amount from Prior Notices	Additional Penalty	Additional Interest	Total Amount You Owe

Additionally, our records show that you are not currently residing within the United States or the Commonwealth Territories, or that you travel frequently outside of them.

**What this means to you**

If you should return to the United States or Commonwealth Territories and have not yet paid the total amount due, you may be interviewed by a Customs and Border Protection Officer at the time of entry. The Internal Revenue Service will then be advised of your arrival and will be provided with information enabling us to contact you in the United States or the Commonwealth Territories. A Revenue Officer may then contact you regarding payment of your outstanding liability.

**Who you can contact**

If you have any questions about your account or the notification process described above, please call me at the telephone number above or write me at the address above. If you decide to write, please make sure to address the envelope to my attention.

Sincerely,

[Redacted Signature]  
 [Name]  
 Revenue Officer

Letter 4106 (Rev. 11-2017)  
 Catalog Number 48442W

- NOTE: The Letter 4106 is not to be confused with the letter to the State Department certifying the unpaid tax as Seriously Delinquent Tax Debt 9CP 508C

# Responsibilities of the International Revenue Officer

Must exhaust all domestic sources of information available. IRM 5.21.2.3.2 (04-06-2018)



The Revenue Officer, after exhausting all remedies, will first attempt to locate bank accounts of the delinquent taxpayer.



If bank accounts are not possible, then the next option would be garnishing wages from the taxpayer followed by Administrative offsets to garnish federal benefits

# Levies on Domestic Branches of a Financial Institution

Generally, the Code authorizes the Commissioner to levy upon all property or property rights of any taxpayer who is liable for any tax and neglects or refuses to pay that liability within 10 days after notice and demand for payment was made. IRC § 6331.

Section 6331 of the Code imposes no territorial limits on the IRS's ability to levy a foreign bank account, though international law principles may impose restrictions.

## Levies of Bank Accounts Held in Offices Outside the United States – 26 CFR § 301.6332-1(a)(2)

- Federal regulations provide two different sets of procedures with regard to a levy on bank deposits held in offices outside of the United States depending upon whether the taxpayer is or is not within the jurisdiction of a U.S. court when the levy is made.



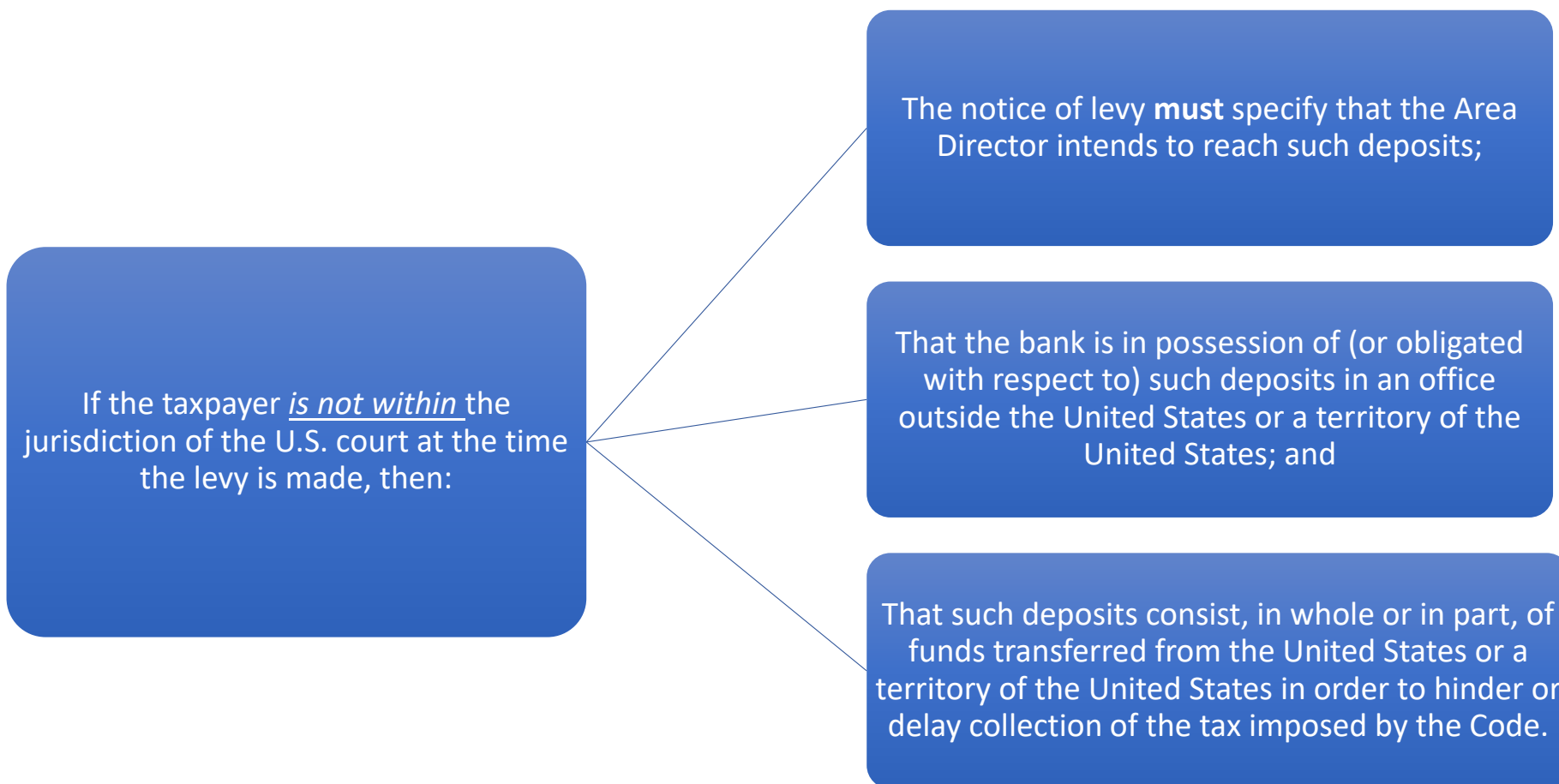
# Procedures for Levying Bank Accounts Held outside the U.S.

If the taxpayer *is within* the jurisdiction of a U.S. court at the time the levy is made, then:

The notice of levy **must** specify that the Area Director intends to reach such deposits, and;

That the bank is in possession of (or obligated with respect to) such deposits in an office outside the United States or a territory of the United States. IRM 5.21.3.2 (01-07-2016)

# Procedures for Levying Bank Accounts Held outside the U.S.



# Wage Levy

If the IRS levies (seizes) your wages, part of your wages will be sent to the IRS each pay period until:

- You make other arrangements to pay your overdue taxes;
- The amount of overdue taxes you owe is paid; or
- The levy is released. IRC § 6331(e)

# Administrative Offsets

Government agencies, including the IRS, are authorized to collect debts using any of the methods enumerated in 31 U.S.C. § 3711. The regulations authorize “treasury entities” to collect debts by offset of tax refunds or benefits, private collection agency, credit bureau reporting, administrative wage garnishment or litigation. 31 CFR § 5.4(a)(6)(i)

Additionally, IRC § 6331(h) authorizes the IRS to issue continuous levies on payments referred to as “specified payments.”

# Administrative Offsets

Federal payments eligible for offset include the following:

- Tax refunds
- Salary;
- Travel advances and reimbursements;
- Retirement and vendor payments;
- Social Security and other benefit payments
  - 31 CFR 285.5(e)(1)

To pursue tax refund offsets, the creditor agency must certify that:

- Debt is at least \$25, past-due, and legally enforceable;
- Collections will be applied to debt;
- Reasonable efforts have been made to obtain payment (unique to tax refunds);

# Levy of Social Security Benefits

- Pursuant to IRC § 6331, the IRS has the authority to levy 100% of a delinquent taxpayer's Social Security Benefit.

# Prevent Departure Orders

## Overview:

- A customs order or a prevent departure order is an administrative action that can prevent a **non-U.S. citizen** from exiting the United States, pending the resolution of a collection matter.

## Authority:

- The authority for a customs order is 22 C.F.R. § 46.2(a), which is entitled “Authority of departure-control officer to prevent alien’s departure from the United States.”

# Procedure for Custom Order or Prevent Departure Order

- The TECS coordinator may need to provide instructions to the Department of Homeland Security if the taxpayer is prevented from leaving the country.
- When a foreign national is detained under a Prevent Departure Order, the special agent must promptly inform the detainee of his/her right to have his/her government informed of such event and that he/she has a right to consular access



# Procedure for Custom Order or Prevent Departure Order

In most cases, the foreign national has the option to decide whether to have consular officials notified.

Some agreements with certain countries require mandatory notification when their nationals are arrested or detained. IRM 9.4.12.9 (08-11-2008).

# How to be released from a Prevent Departure or Customs Order

One way to be released is to be removed from the TECS Lookout Indicator List which occurs when:

01

The tax liability is satisfied.

02

Taxpayer has entered into IRS approved arrangement to satisfy the tax liability, such as installment agreement.

03

The taxpayer's OIC has been accepted. (But will not be deleted if an OIC still under investigation.)

04

Taxpayer is deceased and whose death is verified.

05

Taxpayer is in bankruptcy.

06

Any other situation that renders the continuation of TECS unnecessary

A Prevent Departure Order may also be lifted if the taxpayer satisfies the bail amount in the Order (often the amount of the outstanding tax).

# Income Tax Treaties

There are more than sixty bilateral income tax treaties in which the United States is a signatory

However, only *six* bilateral treaties contain broad provisions allowing for mutual assistance in collection. IRM 5.21.7.4 (06-03-2020)

- Canada – All taxes including both individual and business
- Denmark – Income taxes and other specified taxes
- France – Income taxes and other specified taxes
- Japan – Income taxes and other specified taxes
- The Netherlands – Income taxes and other specified taxes
- Sweden – Income taxes and other specified taxes

The U.S. has entered into a number of Tax Information Exchange Agreements (TIEAs) for the exchange of information

The U.S. also has Mutual Legal Assistance Treaties (for criminal matters) to obtain information from abroad

- Nearly all bilateral income tax treaties entered into between the U.S. and other countries have exchange of information provisions (See Article 26 of the 2016 U.S. Model Tax Convention)
  - Exchange of information pursuant to a specific request
  - Automatic exchange of information
  - Spontaneous exchange of information
- Automatic exchange of information (AEOI)
  - FATCA intergovernmental agreements facilitate the automatic exchange of information with certain treaty partners
  - Exchange of Country-by-Country information under OECD BEPS Action 13
  - Other global exchanges in the future – CARF (Crypto-Asset Reporting Framework)

## Mutual Collection Assistance Requests, IRM 5.21.7.4 (06-03-2020)

- A mutual collection assistance request, or MCAR, is an agreement between the United States and the treaty partner to combat international tax avoidance and evasion.
- There is a mutual obligation to collect taxes on behalf of another country.
- The treaties provide that each contracting country can take whatever actions it would take to collect its own taxes in order to collect the taxes of a treaty partner. Each country uses its own unique collection tools to collect the tax of a treaty partner.

# Administering Mutual Collection Assistance Requests

The MCAR program is administered by the USCA, which is part of the Large Business and International Division with assistance provided by Small Business and Self-Employed Field Collection

The USCA is the coordinating authority with the foreign government. All inbound MCARs are received and processed through the USCA. All communications with a treaty partner must be transmitted through the USCA. IRM 5.21.7.4 (06-03-2020).

# Procedure for Mutual Collection Assistance Request

To request an outbound MCAR, the revenue officer must complete Form 14424, *Mutual Assistance Request Treaty Referral*, and provide personal information and information about income or assets in the treaty partner country

- Request **must** be approved by manager

The request is then sent to a mutual collection assistance request coordinator, who can accept or deny the request.

- If denied, the ICS history will be updated to include the denial
- If accepted, the coordinator will open a Collection Initiative Program (CIP) Case and document the ICS history

# Requirements for a MCAR to be accepted. IRM 4.60.1.6.3 (10-15-2018)

- The following conditions must be met for a MCAR to be valid:

A tax treaty or protocol that includes a provision for mutual tax collection exists with the requesting/requested country;

A tax must be finally determined by the requesting country;

The statute of limitations on the collection of debt must still be open in the requesting country;

A reasonable effort to collect the debt must have been made by the requesting country before submitting the mutual collection assistance request;

All correspondence must be addressed to an official authorized to receive communications relating to mutual collection assistance;

The request meets the stipulations within the specific tax treaty article or protocol, including the specific citizenship limitation provided for in the applicable treaty;

The tax treaty or protocol covers the type of tax in question; and

The request is accompanied by a datasheet listing certain information about the debt



# Procedure For Mutual Collection Assistance Request

- The mutual collection assistance request is forwarded to the Office of Competent Authority in the IRS's Large Business and International division, and that Competent coordinates the request with the foreign government.

# Internal Revenue Service Online Payment Tools

- International taxpayers who do not have a U.S. bank account may transfer funds from their foreign bank account directly to the IRS for payment of their individual or business liability.

# International Wire Transfer

- In order to complete an international wire transfer, the taxpayer will have to complete the Same-Day Taxpayer Payment Worksheet with the proper Tax Type Code.

# Same-Day Wire Transfer Taxpayer Worksheet

## SAME-DAY TAXPAYER WORKSHEET

To arrange an electronic same-day federal tax payment, complete this form and present it at your financial institution. Please type or print clearly.

- 1 Total tax payment: (Include interest and penalty if applicable) \$ \_\_\_\_\_
- 2 Taxpayer Identification number: \_\_\_\_\_
- 3 Taxpayer name control: (the first four letters of your business name) \_\_\_\_\_
- 4 Taxpayer name: \_\_\_\_\_
- 5 Tax type: (5 characters) see Common IRS Tax Type table below \_\_\_\_\_
- 6 Tax year: (2 digits) \_\_\_\_\_
- 7 Tax month/quarter: (2 digits) see Common IRS Tax Type table below \_\_\_\_\_

### OPTIONAL INFORMATION:

If the payment includes tax, interest, and penalty:

NOTE: The sum of lines 8–10 must equal the amount in line 1.

- 8 Tax amount \$ \_\_\_\_\_
- 9 Interest amount \$ \_\_\_\_\_
- 10 Penalty amount \$ \_\_\_\_\_

\*For assistance determining the name control, see page 10.  
\*\*A comprehensive Tax Type list is available online at [www.irs.gov](http://www.irs.gov). Personal assistance is available by calling 1.800.829.4933.

## COMMON IRS TAX TYPES AND SUBTYPES

Form Number	Form Name	Tax Type Prefix (First 4 Digits)	Valid Suffixes (Last Digit—see Legend Below)	Valid Months
720	Quarterly Excise Tax	7200	3, 4, 5, 7, 8, 9, B	03, 06, 09, 12
7200D	Branded Prescription Drug Fee	7200	D	08
940	Employer's Annual Unemployment Tax	0940	3, 4, 5, 7, 8, 9, B	12
941	Employer's Quarterly Tax	9410	0, 3, 4, 5, 7, 8, 9, B	03, 06, 09, 12
944	Employer's Annual Federal Tax	9440	0, 1, 3, 4, 5, 7, 8, 9, B	12
945	Withheld Federal Income Tax	0945	0, 3, 4, 5, 7, 8, 9, B	12
990T	Exempt Organization Business Income Tax	9904	2, 3, 4, 6, 7, 8, 9, B	Fiscal Year Month (01–02)
1042	Annual Withholding Tax for U.S. Source of Income of Foreign Persons	1024	2, 3, 4, 5, 7, 8, 9, B	12
1120	Corporation Income Tax Federal	1120	0, 2, 3, 4, 6, 7, 8, 9, B	Fiscal Year Month (01–02)
2290	Heavy Vehicle Use Tax	2290	3, 4, 7, 8, 9, B	01–12
8804	Annual Return of Partnership Withholding Tax (Section 1446)	8804	3, 4, 7, 8, 9, B	01–12
8963	Health Insurance Providers Fee	8963	7	09

Legend for Tax Type Suffixes (the one character suffix follows the 4-digit form number for the tax type):

Suffix	Type	Suffix	Type
0	Amended	7	Subsequent-With Return
2	Extension	8	Designated Payment of Interest
3	Designated Payment of Fees or Collection Costs	9	Designated Payment of Penalty
4	Advance Payment of Determined Deficiency	B	IRS 6603 Deposits (cash bond)
5	Payment	D	Branded Prescription Drug Fee (only)
6	Estimated		

\*7200 D does not have a paper form associated with it. It is the only tax type used for the Branded Prescription Drug Fee.

## WIRE INSTRUCTIONS

Mandatory fields below are BOLD.

<b>Receiving ABA/Routing Number [3400]</b>	091036164
<b>Receiving FI Name [3400]</b>	US TREAS SINGLE TX
<b>Beneficiary [4200]</b>	Taxpayer Identification Number: Name Control: Taxpayer Name: Tax Type: Tax Year: Tax Month:  Example: 123456789-ABCC:ABC Company:94105:08:03: This information is obtained from the worksheet lines 2–7 on page 25
Note: Financial Institutions or vendors may refer to this as the <b>Beneficiary Account Number</b>	

Wires received after 5 p.m. ET will be rejected and returned to the financial institution. FTCS does not warehouse payments for the next business day.

Errors in the information listed above or wires sent in an incorrect format may result in the wire being rejected and returned, potentially causing a late payment and penalties.

## TRANSACTION CONFIRMATION

You may call FTCS at **1.800.382.0045** and follow the automated prompts to receive the 15-digit Electronic Funds Transfer (EFT) number for your transaction

If the customer is enrolled in EFTPS, he or she may check [EFTPS.gov](http://EFTPS.gov) or call **1.800.605.9876** the business day after the transaction was completed to obtain the EFT acknowledgment number.

15-digit EFT number \_\_\_\_\_

## NOTE

If using FedLine® Advantage to make same-day federal tax payments (wires), financial institutions should use the Federal Tax Payment Form.

# Completing the Wire Transfer

After completing the worksheet, the taxpayer should then take the worksheet to their bank to request international wiring.

To complete a wire transfer you will need the following information:

- A completed Same-Day Taxpayer Worksheet
- IRS account number – **20092900IRS** (optional)
- IRS account RTN/ABA Number – **091036164 US TREAS SINGLE TX**

# Department of Justice Collection

# Revenue Rule

- The U.S. and most foreign jurisdictions recognize the “revenue rule,” which states that jurisdictions have no obligation to assist in collecting taxes assessed by a foreign government. *See, e.g., Attorney Gen. of Canada v. R.J. Reynolds Tobacco Holdings, Inc.*, 268 F.3d 103, 109 (2d Cir. 2001).

# Revenue Rule

- Absent a treaty, there is usually no means of collecting taxes in a foreign country through their courts. However, if there is a possibility to classify a claim as something other than a “tax” then there may be options to adjudicate the claim. *See Skatteforvaltningen v. Solo Capital Partners LLP* [2021] EWHC 974



# Reducing the Tax Claim to Judgment

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The responsibility for collection of judgments rests with the Department of Justice (DOJ) or the U.S. Attorney.

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The Area Director will be requested to conduct an immediate investigation to ascertain whether the judgment debtor has property from which to satisfy the judgment.

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Thereafter, procedures require Directors to repeat such investigation at stated intervals.

# DOJ International Collection Capabilities

Repatriation  
Orders

Receivership

Writ Ne Exeat  
Republica

# Orders to Repatriate Property

The DOJ may review the information provided by the IRS and then move forward by filing a Motion to Repatriate Property.

Standards for Receiving Order -- there must generally be:

- An outstanding tax liability;
- A reasonable basis that the taxpayer has assets outside the U.S.
- Levy on domestic assets is not sufficient to satisfy the tax liability; and
- The United States has (or can get) personal jurisdiction over the taxpayer-defendant IRM 5.21.3.6(2) (01-07-2016)).

# DOJ-Tax and Court Procedures for Repatriation Suits



A repatriation order is typically requested in connection with a suit to reduce a tax assessment to judgment, a suit to foreclose a federal tax lien, a summons enforcement proceeding, and/or a request for a writ ne exeat republica



In such suits, the United States will specifically request

- (1) an injunction or order directing the taxpayer to repatriate the property, or
- (2) appointment of a receiver to repatriate the taxpayer's assets and pay the taxpayer's taxes.



The court should hold a hearing to satisfy due process concerns.

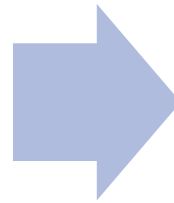
# Criminal Referral from Repatriation Suit

When can a taxpayer subject to a civil repatriation suit be referred for a criminal investigation?



# Repatriation Orders and Appointment of Receivers

In a suit to repatriate property, the United States may petition a court for an order requiring a taxpayer who has either transferred assets from the U.S. to a foreign country or acquired assets in a foreign country to transfer them back into the United States.



Sometimes, courts will not only grant an order to repatriate certain property, *but also* appoint a receiver to repatriate the taxpayer's assets and pay the taxpayer's taxes.

# Appointment of a Receiver

- 26 U.S.C. § 7402(a) allows the United States district courts to order the appointment of a receiver to take control of a delinquent taxpayer's assets in connection with other collection actions. An action to appoint a receiver is most typically requested in connection with a writ ne exeat republica or a repatriation order. IRM 5.21.3.5(3) (01-07,-2016).

# Example Motion for Appointment of Receiver

## UNITED STATES' MOTION FOR APPOINTMENT OF RECEIVER

The plaintiff, the United States of America, by its undersigned counsel, pursuant to 26 U.S.C. §§ 7402(a) and 7403(d), requests an Order of this Court appointing \_\_\_\_\_ as Receiver to take possession of and to arrange for the sale of the real property located at \_\_\_\_\_ (the \_\_\_\_\_ property).

That real property is more particularly described as:

In support of this motion, the United States states as follows:

1. The United States' Complaint in this action sought a money judgment for unpaid federal income tax assessments against \_\_\_\_\_, and the foreclosure of the associated federal tax liens on the \_\_\_\_\_ property, and to have that property sold for application of an appropriate portion of the net sale proceeds to those unpaid assessments.



# What is a receiver?

A receivership places a responsible individual, known as the receiver, who works under the direction of the court in control of the taxpayer's assets. IRM 5.21.3.5(2) (Jan. 7, 2016).

The receiver controls and conserves the assets or liquidates the assets in an orderly and efficient manner. *Id.*

# When is a receiver appropriate?

- In order for the IRS to petition for the appointment of a receiver, the taxpayer's U.S.-based assets must be insufficient to fully satisfy the tax liability and evidence must exist to confirm the existence of substantial assets outside the United States. IRM 5.21.3.6(4) (01-07-2016).

# Writ Ne Exeat Republica Actions

In general, A writ of ne exeat republica is a form of injunctive relief ordering the person to whom it is addressed not to leave the jurisdiction of the court or the state, for example, to aid the sovereign to compel a citizen to pay his taxes. *United States v. Barrett*, No. 1:10-cv-02130 (D. Colo. Jan. 29, 2014).

A writ ne exeat republica can be requested by the government and issued by a United States district court to temporarily detain taxpayers from entering or leaving the United States in certain circumstances.

# Purpose of the Writ Ne Exeat Republica

The purpose of a writ ne exeat republica is to preserve the court's power to provide a means of protecting the government's ability to collect the tax by another means. IRM 5.21.3.3(2) (01-07-2016).

The term "writ ne exeat republica" is Latin for "let him not go out of the republic."

# Provisions of the Writ Ne Exeat Republic

- The writ will specify the function, generally the United States Marshal, responsible for serving the order and taking the taxpayer into custody.
- Provisions generally include that the taxpayer is:
  - To be taken into custody unless they post adequate security for the outstanding debt;
  - To remain in custody pending a final evidentiary hearing on the writ;
  - Required to provide testimony and documentation as to the value and extent of all assets;

# Factors in Determining Whether to Pursue the Writ Ne Exeat Republica Action

The following factors should be considered in determining whether to initiate a writ ne exeat republica:

01

The taxpayer has a “large” valid tax liability;

02

Taxpayer has transferred, or is in the process of transferring, substantially all of his assets to a location outside the US;

03

Taxpayer’s distrainable domestic property and other property reachable without the writ are insufficient to satisfy the tax liability;

04

Other proposed civil actions will be unenforceable unless the taxpayer cannot remove themselves or their assets from the US;

05

Taxpayer established residency outside the US or intends to do so; and

06

Taxpayer’s assets cannot be reached absent the issuance of the writ. IRM 5.21.3.3(3) (01-07-2016).

# Pursuing the Writ Ne Exeat Republica Action

The DOJ may review the factors and information provided by the IRS and prepare an order requesting the issuance of the writ such as the example here:

**Exhibit 34.12.1-15**  
**Motion for Writ of Ne Exeat**

United States Attorney  
Assistant United States Attorney Division  
[address and phone no.]  
Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT FOR THE [LOCATION]

UNITED STATES OF AMERICA,	)
Plaintiff,	)
	) CASE NO.
v.	)
	) MOTION FOR WRIT OF NE EXEAT
Defendant.	)
	)

The United States of America, by its attorney, the United States Attorney, moves this Court issue a writ of ne exeat directed against defendant on the ground that such defendant intends quickly to depart from the continental limits of the United States, as more particularly appears from the affidavit of Area Director, [organization] of the Internal Revenue Service, duly authorized agent of the United States of America, which affidavit is attached pursuant to the provisions of section 1651, Title 28 of the United States Code and section 7402(a), Title 26 of the United States Code.

WHEREFORE, it is prayed that this motion be granted.

DATED:

United States Attorney

By:

[name]  
Assistant United States Attorney  
Tax Division

# Pursuing the Writ Ne Exeat Republica Action

- Before a revenue officer recommends seeking a writ ne exeat republica action, the agent must generally:
  - Exhaust meaningful collection enforcement against U.S.-based property;
  - Document the taxpayer's location;
  - Document the taxpayer's attempts to conceal or gather property in anticipation of transfer; and
  - Document time and location of likely return if the taxpayer is out of the United States. IRM 5.21.3.3(4) (01-07-2016).



# Revocation or Denial of Passport

# Revocation or Denial of Passport – IRC § 7345

- If the Secretary receives certification by the Commissioner of Internal Revenue that an individual has a ***seriously delinquent tax debt*** [currently \$54,000], 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 Fixing America's Surface Transportation (FAST) Act. (emphasis added)
  - The tax debt must be final and all administrative rights under IRC § 6320 must have been exhausted or lapsed.

# Certification by the Commissioner

The Commissioner certifies to the Secretary of the Treasury that a tax debt is seriously delinquent

The Secretary of the Treasury, in turn, certifies to the Secretary of State that a tax is seriously delinquent

# Certification by the Commissioner

After certification, the Secretary of State must deny a passport application and may revoke an existing passport.

No restriction on revocation, nor any criteria for revocation, is found in § 3210 of the FAST Act or IRC § 7345

Secretary of State has unqualified discretion to revoke a passport, but no statute compels revocation.

# Discretionary Exclusions - IRM 5.19.25.5 (08-12-2020)

IRC § 7345 provides the IRS the discretion to exclude categories of tax debt from certification, even if the debt meets the criteria in IRM 5.19.1.5.19.2, Seriously Delinquent Tax Debt.

The following categories of tax debt will be excluded from the determination of seriously delinquent tax debt of the IRS:

- A. Debt that is determined to be currently not collectible (CNC) due to hardship,
- B. Debt that resulted from identity theft,
- C. Taxpayers in a Disaster Zone,
- D. Debt of a taxpayer in bankruptcy
- E. Debt of a deceased taxpayer,
- F. Debt that is included in a pending OIC,
- G. Debt that is included in a pending IA, &
- H. Pending claim; resulting adjustment is expected to result in no balance due.

# Taxpayer Notification – CP 508C



The IRS is required to notify the taxpayer in writing at the time the IRS certifies seriously delinquent tax debt to the State Department.

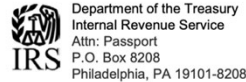


The IRS is also required to notify the taxpayer in writing at the time it reverses certification.



The IRS will send written notice by regular mail to the taxpayer's last known address.

# Taxpayer Notification – CP508



Notice	CP508C
Notice date	January 30, 2019
Taxpayer ID number	NNN-NN-NNNN
To contact us	Phone 800-829-1040 International: +

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BUSINESS NAME  
ADDRESS  
CITY, STATE ZIP

#### Notice of certification of your seriously delinquent federal tax debt to the State Department

#### Amount due: \$97,978.55

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 seriously delinquent tax debt. The FAST Act generally prohibits the State Department from issuing or renewing a passport to a taxpayer with seriously delinquent tax debt.

We have certified to the State Department that your tax debt is seriously delinquent. We show that you still owe \$97,978.55. This amount includes penalty and interest computed to 30 days from the date of this notice.

This notice only includes the portion of your tax debt that has been certified to the State Department as seriously delinquent, as defined below. You may have additional tax debt that is not included in this notice.

#### Billing Summary

Amount of seriously delinquent tax debt owed	\$85,099.95
Additional penalty charges	5,000.00
Additional interest charges	7,878.55
Amount due by March 1, 2019	<b>\$97,978.55</b>

The IRS will send the CP508C, pictured below, certifying the seriously delinquent tax. If no action is taken, then the Letter 6152 officially revoking the passport

# Avoiding Passport Revocation

## Collection alternatives to avoid revocation:

- IRC § 6159 - Agreements for payment of tax liability in installments
- IRC § 7122 - Compromises
- IRC § 6330 - Notice and opportunity for hearing before levy [Collection due process]
- IRC § 6015 - Relief from joint and several liability on joint return [Innocent Spouse]



# Taxpayer Challenge to the Certification

- 7345(e)-Judicial review of certification
  - (1) In general. After the Commissioner notifies an individual under subsection (d), the taxpayer may bring a **civil action against the United States in a district court of the United States** or the **Tax Court** to determine whether the certification was erroneous or whether the Commissioner has failed to reverse the certification.
  - (2) Determination. If the court determines that such certification was erroneous, then the **court may order the Secretary to notify the Secretary of State that such certification was erroneous.**

# I.R.C. § 6751(b)(1)

- “No penalty under this title shall be assessed unless the initial determination of such assessment is personally approved (in writing) by the immediate supervisor of the individual making such determination or such higher level official as the Secretary may designate.”

# Written Supervisory Approval of Penalties

- Purpose of this statute: To prevent the IRS from using unapproved penalties as a bargaining chip.
  - Senate Report: “Penalties should only be imposed where appropriate and not as a bargaining chip.”
  - Joint Committee Report: IRS must present evidence that “it is appropriate to apply a particular penalty to the taxpayer before the court can impose a penalty.”
  - Conference Report: “The IRS must treat the American people with respect.” “[This bill] will help protect taxpayers by increasing oversight, holding IRS employees accountable and insuring taxpayers are treated with fairness”

# How Do You Test IRS Compliance?

- IRC § 6330 Collection Due Process Hearing
  - “The appeals officer shall at the hearing obtain verification from the Secretary that the requirements of any applicable law or administrative procedure have been met.” IRC 6330 (c)(1).
- Beware of fraud
  - Lakepoint Land II, LLC, v. Commissioner, T.C. Memo. 2023-11 (managing IRS revenue agent intentionally backdated a penalty approval)

## Farhy v. Commissioner, 160 T.C. No. 6 (2023)

- Tax Court held that the IRS does not have statutory authority to assess international information return penalties under IRC § 6038(b).
  - Form 5471
- The IRS may still be able to collect through a civil action and judgment, but cannot assess and administratively collect the penalties.
- There are many other penalty provisions that lack the same language limiting assessment authority.
- The case is on appeal.

# Best Practices



**Questions?**