

5.1.12.27 (12-20-2017)

Passport Certification in Case of Certain Tax Debts

1. The Fixing America's Surface Transportation (FAST) Act, signed into law December 4, 2015, created new code section IRC § 7345 which requires the IRS to notify the State Department when an individual is certified as owing a seriously delinquent tax debt.

5.1.12.27.1 (12-20-2017)

Passport Certification Overview

1. IRC § 7345 requires the IRS to notify the State Department that an individual is certified as owing a seriously delinquent tax debt. Upon certification, the State Department shall be notified that an individual is certified as owing a seriously delinquent tax debt.
2. IRS Commissioner approval is required for certification and has not been re-delegated below the Commissioner of an Operating Division.
3. When this notification of certification is received from the IRS, the State Department is generally required to deny the certified individual a U.S. passport (or renewal of a U.S. passport) or may revoke any U.S. passport previously issued to that individual. The State Department has the sole authority to revoke or limit a passport held by a certified individual. Whether a passport will be revoked or limited is left solely to the discretion of the State Department.

Note:

Passport certification is separate and distinct from obtaining passport information from the United States Passport Office in connection with an official investigation. See IRM 5.1.18.13, *United States Passport Office*, for procedures on how to request a passport check.

Reminder:

If after spending a reasonable amount of time researching the issue without success, consulting with your manager, an OJI, or a senior revenue officer, follow the procedures to post questions to the Ask Collection Policy web site at <http://mysbse.web.irs.gov/Collection/askcollectionpolicy/default.aspx> to seek technical clarification of procedures related to passport legislation or to raise issues that need clarification in future IRM updates. This site does not replace the need to work through management channels to resolve specific taxpayer cases. Questions posted to this site should not contain personally identifiable information.

5.1.12.27.2 (12-20-2017)

Seriously Delinquent Tax Debt

1. For the purpose of passport certification, seriously delinquent tax debt is the unpaid, legally enforceable federal tax liability, which has been assessed, of an individual totaling more than \$50,000 for which:
 - a. A Notice of Federal Tax Lien has been filed and all administrative remedies under IRC § 6320 have lapsed or been exhausted, or

Note:

When a Collection Due Process (CDP) Lien hearing is timely requested, or pending, in connection with the filing of a Notice of Federal Tax Lien, the taxpayer's remedies under IRC 6320 have not been exhausted until the CDP hearing (and any appeals of the determination)

have been concluded. If no CDP Lien hearing is requested for the NFTL, the above criteria is met once the time period for requesting a timely CDP Lien hearing has lapsed.

Note:

A pending or requested Equivalent Hearing (EH) in connection with the filing of a Notice of Federal Tax Lien, as described in IRM 5.1.9.3.2.2, will not preclude a liability from being considered a seriously delinquent tax debt.

- b. A levy has been issued.
2. The \$50,000 threshold, which is indexed yearly for inflation, is the aggregate unpaid balance of assessment. The unpaid balance of assessment includes tax and assessed interest and penalties. It does not include accrued interest and penalty.

Note:

As of January 1, 2018, the threshold amount indexed for inflation will be \$51,000.

Caution:

Once the taxpayer is certified, paying the account below the \$50,000 threshold (or the threshold amount indexed for inflation effective at the time of certification) will **not** result in decertification. Certification will not be reversed unless **all** certified modules for which notice of the certification have been sent have been fully satisfied (e.g. Status 12), become legally unenforceable, or meet the criteria for reversal in accordance with IRM 5.1.12.27.8.

3. Unless otherwise listed as statutory or discretionary exclusions (in IRM 5.1.12.27.3 or IRM 5.1.12.27.4), a seriously delinquent tax debt includes, but is not limited to, tax assessments made under an individual's taxpayer identification number (SSN or EIN) such as U.S. individual income taxes, trust fund recovery penalties, business taxes for which the individual is liable and other civil penalties. This does not include other non-tax liabilities such as:
 - ACA assessments, Individual SRP modules (MFT 35 or 65),
 - Employer Shared Responsibility Payments (ESRP) modules (MFT 43),
 - Criminal Restitution assessments (MFT 31 with unreversed TC 971 AC 102),
 - Child Support Obligations (NMF MFT 59). See IRM 3.8.45.6.35, *Sub-Pays for Child Support MFT 59*
 - Report of Foreign Bank and Financial Accounts (FBAR) assessments.

Note:

FBAR penalties are asserted under Title 31 as a non-tax debt and do not appear on IDRS. They are tracked on a separate database at Detroit where payments are posted and notices generated.

5.1.12.27.3 (12-20-2017)

Statutory Exclusions from Certification

1. IRC § 7345(b)(2) **excludes** the following tax debt from the determination of seriously delinquent tax debt, even if it meets the criteria in IRM 5.1.12.27.2, *Seriously Delinquent Tax Debt*.
 - a. Debt that is being paid in a timely manner under an installment agreement entered into with the IRS under IRC 6159 ,

Exception:

Per IRM 5.11.5.6, even though some continuous levies are monitored in status 60 on IDRS, they are not installment agreements and **do not** meet the criteria for this exclusion.

- b. Debt that is being paid in a timely manner under either an Offer in Compromise accepted by the IRS or a settlement agreement entered into with the Department of Justice under IRC 7122,
- c. Debt on which collection is suspended because a Collection Due Process hearing under IRC 6330 is timely requested, or pending, in connection with a levy to collect the debt, or

Exception:

An Equivalent Hearing (EH) in connection with a levy to collect the debt, as described in IRM 5.1.9.3.2.2 **does not** meet the criteria for this exclusion.

- d. Debt on which collection has been suspended because a request for innocent spouse relief under IRC 6015 has been made.

- 2. Certification is postponed under IRC 7508(a) for taxpayers serving in a combat zone. For taxpayers serving in a combat zone who owe a seriously delinquent tax debt, the IRS postpones notifying the State Department and the individual's passport is not subject to denial during this time.

5.1.12.27.4 (12-20-2017)

Discretionary Exclusions from Certification

- 1. IRC § 7345 provides the IRS discretion to exclude categories of tax debt from certification, even if the debt meets the criteria in IRM 5.1.12.27.2, *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 currently not collectible (CNC) due to hardship (unreversed TC 530 cc 24 - 32),
- b. Debt that resulted from identity theft (unreversed TC 971 AC 501, 505, 506, 522, 523, and 525),
- c. Debt of a taxpayer in bankruptcy,
- d. Debt of a deceased taxpayer,

Note:

Only the individual identified as deceased is excluded from certification.

- e. Debt that is included in a pending Offer in Compromise (unreversed TC 480),

Exception:

This exclusion **does not** apply unless the Offer in Compromise meets pending Offer in Compromise criteria as described in IRM 5.8.2.3.1, *Determining Processability*.

Exception:

This exclusion **does not** apply if the Offer in Compromise was made solely to delay collection. See IRM 5.8.4.20, *Offer Submitted Solely to Delay Collection*.

- f. Debt that is included in a pending installment agreement (unreversed TC 971 AC 043),

Exception:

This exclusion **does not** apply unless the installment agreement request meets pending installment agreement criteria as described in IRM 5.14.1.3(4).

Exception:

This exclusion **does not** apply if the installment agreement request was made solely to delay collection. See IRM 5.14.3.2, *Installment Agreement Request Made to Delay Collection*.

- g. Debt with a pending adjustment that will full pay the tax period (unreversed TC 470 AC 90), and
- h. Taxpayers in a Disaster Zone (-O or -S Freeze).

- 2. These discretionary exclusion categories are subject to change in the future.

5.1.12.27.5 (12-20-2017)

Identification of Levy on the Taxpayer's Account

1. Once levy action has occurred, revenue officers will generally not need to take any further steps for the levy action to be identified on the taxpayer's account. Taxpayer accounts will be systemically identified once levy action has occurred. As described in IRM 5.1.12.27.2, the issuance of a levy is one of the criteria for certifying a tax debt is seriously delinquent. A transaction TC 971 AC 640 has been created to identify tax periods for which levy action has occurred. This transaction code will be systemically uploaded beginning January 2017 the first time a module has been included on levy actions occurring after this date.

Exception:

For purposes of passport certification, for modules in which the first levy is manually issued after December 2016, the revenue officer must request a manual input of TC 971 AC 640 via Form 4844 to CCP for each module included on a manual levy that does not already have a TC 971 AC 640. Request the manual input of TC 971 AC 640 only after the taxpayer's right to a post-levy CDP hearing has expired or the CDP hearing is resolved.

2. The systemic input of TC 971 AC 640 to identify levy action on the taxpayer's account is delayed for eight (8) weeks if the taxpayer is given post-levy CDP rights the first time the module is included on a levy. This will allow the taxpayer time to appeal.
3. The following are examples from IRC 6330(f) and (h) in which the IRS may serve a levy to collect taxes prior to giving the taxpayer pre-levy Collection Due Process (CDP) rights:
 - a. Jeopardy levy,
 - b. Disqualified employment tax levy (DETL),
 - c. Federal contractor (FEDCON) levy, and
 - d. Levy on a State to collect a Federal tax liability from a State tax refund.

Note:

For purposes of passport certification, a state income tax refund levy will not be recognized as a levy until CDP notification is provided.

5.1.12.27.6 (12-20-2017)

Identification of Certified Seriously Delinquent Tax Debt

1. Seriously delinquent tax debt will be identified as certified by an unreversed TC 971 AC 641 on each module of a taxpayer's account eligible for certification. The TC 971 AC 641 will be added to CC ENMOD, TXMODA, IMFOLE and IMFOLT, identifying the certified individual by their SSN and the date of their certification notice.
2. Each individual identified as certified will be systemically sent a certification Notice CP 508C displaying each certified module balance. The notice will be sent to the individual's last known address. The issuance of a Notice CP 508C will be displayed in the Notice History Section of CC TXMODA.
3. On a joint module where both the primary and secondary taxpayers are identified as certified, each individual will have their own TC 971 AC 641.

Caution:

Employees should not manually input TC 971 AC 641 or attempt to manually generate Notice CP 508C.

4. Taxpayer certifications will be provided systemically to State Department on a weekly basis.
5. A certified module is decertified when the TC 971 AC 641 is reversed with a TC 972 AC 641. A certified module is reversed when it meets one of the conditions listed in IRM 5.1.12.27.8, *Reversal of Certification*.
6. Each taxpayer's certification stands on its own. A taxpayer will be decertified when the last certified module is reversed with a TC 972 AC 641. A decertified taxpayer will be sent a reversal of certification Notice CP 508R. On a joint account where both the primary and secondary taxpayers are identified as certified, each individual will have their own TC 972 AC 641 to reverse the certification.
7. The Notice CP 508R will be shown in the Notice History Section of CC TXMODA. The TC 972 AC 641 indicating reversal of certification will be displayed on IDRS Command Code ENMOD, IMFOLE, IMFOLT and TXMODA, and reflect the SSN of the decertified individual and date of the decertification (reversal of certification) notice. On a weekly basis, IRS will systemically inform the State Department regarding each newly decertified taxpayer.

5.1.12.27.7 (12-20-2017)

Taxpayer Notification

1. The IRS is required to notify the taxpayer in writing at the time the certification of seriously delinquent tax debt is made to the State Department. Notice CP 508C is sent to the taxpayer.
2. IRS Commissioner approval is required for certification and has not been re-delegated below the Commissioner of an Operating Division.
3. The Notice CP 508C may identify more than one TIN related to a specific taxpayer. Both the liabilities of the IMF and BMF accounts may be used to determine whether the taxpayer meets the certification threshold.
4. The IRS is also required to notify the taxpayer in writing at the time the certification is reversed. Notice CP 508R is sent to the taxpayer.
5. The IRS will send the notice by regular mail to the taxpayer's last known address. Notification will be generated systemically.
6. If an individual certified as having a seriously delinquent tax debt applies for a passport or a passport renewal, the State Department will hold the application of a certified taxpayer open for 90 days to allow the taxpayer to resolve any certification issues, make full payment of the tax debt or enter into a satisfactory payment alternative with the IRS before denying an application for a passport or renewal.

Note:

The State Department is responsible for issuance of U.S. passports. The IRS does not have authority to issue or deny a U.S. passport. Under 22 U.S.C. § 2714a, the State Department may, notwithstanding a certification from the IRS, issue a U.S. passport to a taxpayer if the State Department determines emergency circumstances or humanitarian reasons justify issuance of the passport. This does not affect the taxpayer's certification as a seriously delinquent taxpayer or reverse their certification. If a taxpayer, who is responding to a certification letter from the IRS or a denial letter from the State Department, requests their U.S. passport be issued for non-tax-related reasons, refer them to their local passport office or the contact information provided on their State Department correspondence.

5.1.12.27.7.1 (12-20-2017)

Taxpayer Notification of Subsequent Certified Modules

1. When a certified individual incurs an additional liability that meets the criteria for certification, the aggregate assessed balance is systemically recalculated to include the previously certified modules as well as the new module. If the total liability meets the seriously delinquent debt criteria in IRM 5.1.12.27.2, *Seriously Delinquent Tax Debt*, a new Notice CP 508C is systemically generated reflecting all modules including the new module. As a result, the new Notice CP 508C may reflect different balances for previously certified modules due to changes on the account such as any payments or audit adjustments

Example:

The taxpayer's account was previously certified for a \$65,000 tax debt. When a new module for \$2,000 becomes eligible for certification, the new module's balance will be systemically added to the current balance due of all previously certified modules. If the new aggregate assessed balance is \$48,000 due to payments or offsets, the new module would not be certified because the aggregate assessed balance is less than the minimum amount for certification in IRM 5.1.12.27.2, *Seriously Delinquent Tax Debt*. However, the taxpayer's account remains certified based on the previously certified modules, and will not be decertified until all certified modules are satisfied.

2. If a taxpayer claims they have paid their certified debt on a module based on their Notice CP 508C and the certified module has an additional assessment posted subsequent to the issuance of the notice, the revenue officer sends an explanation of their research results along with a request for assistance through their manager to the Passport Analyst in an e-mail with the subject heading "Review of Subsequent Certified Module" at *SBSE Passport Support.

5.1.12.27.8 (12-20-2017)

Reversal of Certification

1. The IRS will reverse the certification of seriously delinquent tax debt and notify the State Department within 30 days if the previously certified tax debt:
 - a. Is fully satisfied (Status 12),
 - b. Becomes legally unenforceable,
 - c. Ceases to be seriously delinquent tax debt,

Note:

A previously certified tax debt ceases to be seriously delinquent tax debt when a statutory exclusion is met. See IRM 5.1.12.27.3, *Statutory Exclusions from Certification*.

Exception:

Certification will **not** be reversed because the taxpayer pays the debt to below the threshold amount indexed for inflation effective at the time of certification. **All** certified modules must be fully satisfied (e.g., Status 12), become legally unenforceable, or meet an exclusion for certification to be reversed.

2. If the certification is found to be erroneous, the IRS will notify the State Department as soon as practicable. The IRS will also notify the taxpayer once the certification is reversed. Examples of erroneous certification are as follows:
 - a. A taxpayer is in a Combat Zone, but the service did not receive notification. The account was erroneously certified because no -C Freeze was present.
 - b. The taxpayer has an approved installment agreement being paid in a timely manner but the TC 971 AC 063 was not input in IDRS on the taxpayer's account.

- c. The taxpayer has an innocent spouse relief claim under IRC 6015, and the account was not properly coded.
3. The Tax Court or a District Court of the United States may order the IRS to reverse the certification. See IRM 5.1.12.27.9, *Appeals Process and Judicial Review of Certification*.

Note:

When decertification is required as a result of litigation, the revenue officer should work with Counsel to provide notification to the Passport Analyst as described in IRM 5.1.12.27.9, *Appeals Process and Judicial Review of Certification*.

4. The IRS has the discretion to request a decertification for other reasons. The IRS will decertify a previously certified tax debt that ceases to be seriously delinquent tax debt when a discretionary exclusion is met. See IRM 5.1.12.27.4, *Discretionary Exclusions from Certification*. Examples of discretionary reversal include:
 - a. A certified taxpayer who later files bankruptcy (unreversed TC 520 cc 60-67, 81, 83-89).
 - b. A certified taxpayer entering a Combat Zone.
 - c. A certified taxpayer who is later determined to be currently not collectible due to hardship (unreversed TC 530 cc 24-32).
 - d. The Department of State requests the IRS to decertify.
 - e. An adjustment to the account that reduces the original certification amount below the threshold for certification in IRM 5.1.12.27.2. The original return has been filed and processed, or the adjustment has posted.

Example:

IRS assesses taxpayer's liability of \$54,000, of which \$9,000 is attributable to a penalty. The taxpayer's seriously delinquent tax debt 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 in IRM 5.1.12.27.2, the taxpayer is eligible for decertification.

Caution:

Not all penalty abatements will result in decertification. For example, a penalty abatement of a certified module due to an administrative waiver under the First Time Abate criteria in IRM 20.1.1.3.3.2.1 will **not** result in decertification, even if the adjusted total liability is less than the threshold amount indexed for inflation.

Example:

The taxpayer has a liability of \$66,000 for tax period 30/201512 due to an SFR assessment. The taxpayer is certified as a seriously delinquent tax debt and receives a Notice CP 508C. The taxpayer is in the process of renewing their U.S. Passport with the Department of State. The taxpayer files a return for tax period 30/201512 which reduces the tax debt to \$30,000. Once the taxpayer's return for 30/201512 is processed and posted on IDRS, the taxpayer will be eligible for decertification.

- f. The taxpayer claims to have paid their certified debt on a module based on their Notice CP 508C and the certified module has an additional assessment posted subsequent to the issuance of the notice. The revenue officer will request assistance through their management chain. This can be done by sending an email asking for assistance from their manager and including the results of their research. If the issue cannot be resolved, forward the email message to the Passport Analyst with the subject heading "Review of Subsequent Assessment" at *SBSE Passport Support.
5. A taxpayer's account will remain certified as seriously delinquent tax debt when:

- a. A taxpayer requests a CDP lien or levy hearing for tax periods which are not the basis of certification of a seriously delinquent tax debt.

Example:

The taxpayer is already certified as owing a seriously delinquent tax debt. The revenue officer issues L-1058 on an additional tax period to provide notice of CDP levy rights. The taxpayer requests a timely CDP levy hearing. The certification of seriously delinquent tax debt is not reversed for the pending CDP levy hearing on this additional tax period.

- b. A taxpayer requests Innocent Spouse relief for tax periods which are not the basis of certification of a seriously delinquent tax debt.
 - c. A taxpayer requests a CDP Lien hearing for a subsequent NFTL filing on the modules that are the basis of certification of a seriously delinquent tax debt.
 - d. A taxpayer requests a CDP Lien hearing when the certification was based on a levy.
6. On a joint module, where both the primary and secondary taxpayers are identified as decertified, a separate TC 972 AC 641 will be input to decertify both spouses.
 7. If the taxpayer's explanation of why their account should be decertified meets decertification criteria, the revenue officer should verify the explanation as appropriate and then utilize existing procedures to update the account with any missing freeze codes or transaction codes that would result in systemically decertifying the taxpayer's account. If the revenue officer is unable to resolve the issue as to why the modules were not decertified, the revenue officer will request assistance through their management chain. This can be done by sending an email asking for assistance from their manager and including the results of their research. If the issue cannot be resolved, forward the email to the Passport Analyst with the subject heading "Review of Certification" at *SBSE Passport Support.
 8. Request expedited decertification when **all** of the following conditions exist:
 - a. A certified taxpayer is eligible for decertification as described above,
 - b. The taxpayer states their foreign travel is scheduled within 45 days or less, **and**
 - c. The taxpayer has a pending application for a passport or renewal and can provide their passport application number.

Note:

Taxpayers residing outside of the United States may have an urgent need for a passport without having imminent travel plans. When a taxpayer residing outside of the United States meets conditions in IRM 5.1.12.27.5(6)(a) and (c), and self-identifies as having an urgent need for decertification, request expedited decertification.

9. Given the urgency of the situation, request an expedited decertification as soon as possible according to the following procedures:

The revenue officer completes Form 14794, *Expedited Passport Decertification*, secures managerial approval and forwards the form to the Passport Analyst in an e-mail with the subject heading "Expedited Decertification" at *SBSE Passport Group.

Reminder:

The taxpayer must provide their passport application number. This number must be entered when completing Form 14794, *Expedited Passport Decertification*, or it is not processable. If the taxpayer applied for a U.S. passport while outside of the U.S., add the location of the passport application (city, country) on Form 14794.

Upon securing the appropriate approval for passport decertification, the Passport Analyst will transmit the Form 14794, *Expedited Passport Decertification*, directly to the State Department for action.

Caution:

Do not offer expedited decertification. Explain that decertification will occur systemically and the State Department will be notified within 45 days. If the taxpayer indicates a problem with planned travel that meets the criteria in IRM 5.12.27.8(6), follow expedited decertification procedures.

Note:

If a taxpayer residing in the United States plans foreign travel more than 45 days in the future, do not utilize expedited decertification procedures. Instead, advise the taxpayer that decertification will happen systemically.

Note:

If it is known that a taxpayer is currently challenging their certification in Tax Court or District Court of the United States and all certified modules for which notice of such certification has been sent have been fully satisfied (e.g. Status 12), become legally unenforceable or meet the criteria for reversal in accordance with IRM 5.1.12.27.8, this information should be communicated to the Counsel attorney handling the taxpayer's court case so that the case can be dismissed.

5.1.12.27.9 (12-20-2017)

Appeals Process and Judicial Review of Certification

1. Although there is no administrative appeals process for certification of a taxpayer's account, IRS sends taxpayers Notice CP 508C, *Notice of Certification of a Seriously Delinquent Tax Debt*. The notice includes an IRS phone number the taxpayers can call to resolve their tax issues.

Note:

Taxpayers who do not agree they owe the tax debt, and are subject to collection action, may have appeal rights as described in IRM 5.1.9.4, *Collection Appeals Program (CAP)*. However, notice of certification of a seriously delinquent tax debt by the IRS, or denial of an application for a passport or renewal by the State Department, are not collection actions that entitle CAP rights.

2. A taxpayer whose debt was certified to the State Department as a seriously delinquent tax debt can file suit in the Tax Court or a District Court of the United States to have the court determine whether the certification is erroneous or the IRS failed to reverse the certification when it was required to do so. If the court determines the certification is erroneous or should have been reversed, it can order the certification reversed.

Note:

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.

3. Counsel will provide notification to the Passport Analyst in an e-mail with the subject heading "Court Ordered Decertification" at: *SBSE Passport Group, when decertification is required as a result of litigation. The e-mail should include:
 - Taxpayer's name
 - Taxpayer's tax identification number

- Docket number, if available.