Brian E. Harriss
6023 Harriss Hammond Road
Harlem, GA 30814
April 14, 2017

US Department of State
National Passport Center
207 International Drive
Portsmouth, NH 03801

RE: 282664870

To Whom It May Concern:

I received a letter dated April 10, 2017 from your office requesting a Social Security number (SSN) for my 5-year-old son's passport application. You are probably already aware that the Social Security Act does not require an SSN for most ordinary individuals. The Social Security Administration has stated that "The Social Security Act does not require a person to have a SSN to live and work in the United States, nor does it require an SSN simply for the purpose of having one" on numerous occasions. For your reference, I have attached a copy of one such official letter stating this.

The passport application form DS11, on page 3 of the instructions under "FEDERAL TAX LAW" purports to require that a US Citizen living in the fifty states of the union must include their SSN where it states "... (26 U.S.C. 6039E) and 22 U.S.C 2714a(f) require you to provide your Social Security number (SSN), if you have one, when you apply for or renew a U.S. Passport."

The use of the pronouns "you" and "your" in this verbiage may lead someone unfamiliar with the nuances of written law to conclude that this verbiage is inclusive of all who need a passport. However, those like myself who do give consideration to the written law know that such second person pronouns only apply to those who fall within the purpose and scope of the legislation so enacted. In other words, "you" and "your" does not necessarily include everyone who reads the DS11 instructions and, as shown below, includes only a small percentage of the U.S. Citizen population seeking a passport.

26 USC 6039E and its regulations are quite limited in scope and purpose. It reads, in part:

> "(a) General rule
>
> Notwithstanding any other provision of law, any individual who—
> (1) applies for a United States passport (or a renewal thereof)...
> shall include with any such application a statement which includes the information described in subsection (b).
>
> (e) Exemption
>
> The Secretary may by regulations exempt any class of individuals from the requirements of this section if he determines that applying this section to such individuals is not necessary to carry out the purposes of this section."

So, what are the "purposes of this section"? And who (what "class of individuals") has the Secretary exempted?

A search in the Federal Register for Treasury Decision (T.D.) 9679 (Federal Register / Vol. 79, No. 138, Friday, July 18, 2014), which contains final regulations corresponding to 26 USC 6039E, 28 years after Congress enacted the public law corresponding to 26 USC 6039E, contains no preamble covering the purpose and scope. But this T.D. does refer to a notice of proposed rulemaking from January 26, 2012 (25 years after Congress enacted this law) as well as a prior notice of proposed rulemaking (57 FR 61373) from December 24, 1992 (6 years after Congress enacted this law). A search into this earlier

notice of proposed rulemaking found in Vol. 57, No. 248 of the Federal Register, reveals the Purpose and Scope of Section 6039E. There, it states in part:

> "Section 6039E is intended to improve tax compliance by resident aliens and U.S. citizens or nationals **living abroad**.
> With respect to U.S. citizens or nationals living overseas but not filing returns, the Congress foresaw that collection of tax after identification might be difficult but nonetheless sought both to give the Internal Revenue Service a further source of information regarding these nonfilers and to notify these **overseas persons** of their continuing duty to file U.S. Tax returns." (emphasis added)

To corroborate the intent of section 6039E, a 1998 GAO report: TAX ADMINISTRATION Nonfiling Among U.S. Citizens Abroad (http://www.gao.gov/archive/1998/gg98106.pdf) contains further statements describing the intent of section 6039E.

> "The intent of section 6039E was that IRS would use this information to identify non-filers **residing abroad**."

> "IRC section 6039E was enacted in 1986 to provide IRS with data from passport applications processed by the State Department for use in identifying individuals **residing abroad** who do not file tax returns." (emphasis added)

Since my 5-year-old son is neither a resident alien nor a U.S. citizen or national living abroad or residing abroad, the only reasonable conclusion is that Section 6039E of the Internal Revenue Code (IRC) has no applicability to him and thus there is no lawful requirement for him to supply an SSN, as he is ostensibly exempted by the Secretary of the Treasury pursuant to the original Preamble to 26 CFR 301.6039E. The words of the law mean what they say and say what they mean.

Additionally, my son has no current intention of living and working abroad. He will be using his U.S. issued Passport as identification for domestic and international vacation purposes in exercising his right to travel. He has no current intention of leaving this country's borders to engage in foreign commerce over which Congress has exclusive jurisdiction.

Therefore, it should be evident that my son and millions of U.S. Citizens who live and/or work in one of the States of the Union are outside of the intended scope and purpose of section 6039E. The intentional misapplication and misrepresentation of a law to those to whom it does not apply is a crime. In most cases it is called extortion. Though 22 U.S.C 2714a(f) gives the Secretary of State the authorization, but not the requirement, to deny a passport application or revoke a passport that does not include a social security number, I trust that the background provided herein of the Scope and Purpose of 26 USC 6039E will make a *writ mandamus* unnecessary.

Pursuant to the foregoing, please make all efforts to expedite the completion of this passport application, and issue my son's passport and return his birth certificate as promptly as possible. We have made nonrefundable travel arrangements departing on Friday, April 21st.

Respectfully,

Brian E. Harriss

Enclosures:
(1) Letter from Social Security Administration
(2) T.D. 9679 FR Doc# 2014-16944_79 FR 41891 July 18 2014_pages 418889-418891
(3) Select Pages from 1998 GAO report: TAX ADMINISTRATION Nonfiling Among U.S. Citizens Abroad
(4) Copy of National Passport Center letter dated 4/10/17

SOCIAL SECURITY

TEH2B
QR3572

January 27, 2009

The Honorable Gus Bilirakis
House of Representatives
Washington, D.C. 20515

Dear Mr. Bilirakis:

This letter is in response to your inquiry on behalf of Mr. C D , , who contacted you concerning the need for a Social Security number (SSN).

The Social Security Act does not require a person to have an SSN to live and work in the United States, nor does it require an SSN simply for the purpose of having one. However, if someone works without a number, we cannot properly credit the earnings for the work performed, and the worker may lose any potential entitlement to Social Security benefits.

Other laws require people to have and use SSNs for specific purposes. For example, the Internal Revenue Code (26 U.S.C. 6109 (a)) and applicable regulations (26 CFR 301.6109-1 (d)) require a person to get and use a number on tax documents and to furnish it to any other person or institution (such as an employer or a bank) that is required to provide the Internal Revenue Service (IRS) information about payments to that person. There are penalties for failure to do so. The IRS also requires employers to report the number with employees' earnings. In addition, people filing tax returns for taxable years after December 31, 1994, generally must include the number of each dependent.

The Privacy Act regulates the use of SSNs by government agencies. They may require a number only if a law or regulation either orders or authorizes them to do so. Agencies are required to disclose the authorizing law or regulation. If the request has no legal basis, the person may refuse to provide the number and still receive the agency's services.

We hope that this information will help you respond to Mr. D . Please let us know if we can be of further assistance.

Sincerely,

Sheryll Ziporkin

Sheryll Ziporkin
Associate Commissioner
Office of Public Inquiries

term capital gain because that would have been the character of the gain if the non-section 1256 position had been disposed of on the day prior to establishing the identified mixed straddle.

(iii) *Analysis of straddle gain and loss.* On February 10, Year 2, the gain of $475 ($975 proceeds minus $500 fair market value on the day prior to entering into the identified mixed straddle) on the non-section 1256 position attributable to the identified mixed straddle period is offset by the $500 loss on the section 1256 contract. The net loss of $25 from the identified mixed straddle is recognized and treated as 60% long-term capital loss and 40% short-term capital loss because it is attributable to the section 1256 contract. See § 1.1092(b)–3T(b)(4).

*Example 3.* (i) *Facts.* On January 3, Year 1, A purchases 100 shares of Index Fund for $1,000 ($10 per share). The Index Fund shares are actively traded personal property and are not section 1256 contracts. As of the close of the day on June 24, Year 2, the fair market value of 100 shares of Index Fund is $1,200. On June 25, Year 2, A enters into a short regulated futures contract (Futures Contract) referenced to the same index referenced by Index Fund. Futures Contract is a section 1256 contract and A makes a valid election to treat the shares of Index Fund and Futures Contract as an identified mixed straddle. On December 31, Year 2, the fair market value of A's shares of Index Fund is $1,520 and Futures Contract has lost $300. On January 10, Year 3, A closes out Futures Contract at a loss of $400 when the fair market value of 100 shares of Index Fund is $1,590. On November 20, Year 3, A disposes of all 100 shares of Index Fund for $1,600.

(ii) *Year 2 analysis.* On June 24, Year 2, A has held the Index Fund shares for longer than the long-term holding period, and the $200 of unrecognized gain on the Index Fund shares as of June 24, Year 2, will be characterized as long-term gain under paragraph (a) of this section when the gain is recognized. On December 31, Year 2, Futures Contract is marked to market under section 1256(a)(1). Under paragraph (a) of this section and § 1.1092(b)–3T(b)(4), the loss on Futures Contract of $300 is netted with the $320 unrecognized gain on the Index Fund shares that arose while the identified mixed straddle was in place. Because this unrecognized gain is greater than the deemed realized section 1256 loss, the loss on Futures Contract is treated as a short-term capital loss. The loss, however, will be disallowed in Year 2 under paragraph (c) of this section and the loss deferral rules of section 1092(a) because the unrecognized gain in the Index Fund shares that arose while the identified mixed straddle was in place exceeds the deemed realized loss. Even if this gain were only $250 on December 31, Year 2, the deemed realized loss on Futures Contract would be disallowed because there is $200 of unrecognized gain in the Index Fund shares from the time A held the shares prior to establishing the identified mixed straddle.

(iii) *Year 3 analysis.* When A closes out the Futures Contract on January 10, Year 3, the entire amount of the section 1256 $300 loss that was disallowed on December 31, Year 2, continues to be deferred under paragraph (c) of this section. On November 20, Year 3, A recognizes $200 long-term capital gain from the pre-identified mixed straddle period, and $400 short-term capital gain, $390 of which arose during the identified mixed straddle period and $10 of which arose after the identified mixed straddle was closed. See § 1.1092(b)–2T(a)(1) and paragraph (b) of this section. In Year 3, A recognizes the $300 short-term capital loss from Futures Contract disallowed in Year 2 and the $100 loss accrued on Futures Contract in Year 3 because A no longer holds any positions that were part of an identified mixed straddle.

*Example 4.* (i) *Facts.* On March 1, Year 1, A purchases a 10-year U.S. Treasury Note (Note) at original issue for $100, which is the stated redemption price at maturity of Note. As of the close of the day on March 1, Year 3, Note has a fair market value of $105. On March 2, Year 3, A enters into a regulated futures contract (Futures Contract) that provides A with a short position in U.S. Treasury Notes and A makes a valid election to treat Note and Futures Contract as an identified mixed straddle. A closes her position in Futures Contract on April 15, Year 3, at a $2 loss. On April 15, Year 3, Note has a fair market value of $108. On December 31, Year 3, Note has a fair market value of $106. A holds Note until it matures on February 28, Year 10.

(ii) *Year 3 analysis.* A has $5 of unrealized gain attributable to Note prior to the day the identified mixed straddle was established. Because A acquired a long-term holding period in Note by March 1, Year 3, the $5 of gain will be characterized as long-term capital gain under paragraph (a) of this section when it is recognized. Under § 1.1092(b)–3T(b)(4), when A closes out Futures Contract on April 15, Year 3, the loss of $2 on Futures Contract is netted with the gain of $3 on Note that arose while the identified mixed straddle was in place. Because this gain on Note exceeds the realized loss on Futures Contract, the loss on Futures Contract is disallowed in Year 3 under paragraph (c) of this section. Further, under paragraph (c) of this section and section 1092(a)(1), on December 31, Year 3, the disallowed loss of $2 on Futures Contract cannot be recognized because it is less than the total unrecognized gain of $6 on Note on December 31, Year 3.

(iii) *Year 10 analysis.* When Note matures in Year 10, the $5 of unrecognized long-term capital gain that arose prior to the identified mixed straddle is recognized. Because A receives $100 upon the maturity of Note, A also recognizes a $5 long-term capital loss on Note, for a net gain of $0 (zero). In addition, the termination of all positions in the identified mixed straddle releases the $2 loss disallowed in Year 3 on Futures Contract. The loss on Futures Contract is treated as short-term capital loss in Year 10 under § 1.1092(b)–3T(b)(4).

(e) *Effective/applicability date.* The rules of this section apply to all section 1092(b)(2) identified mixed straddles established after August 18, 2014.

**§ 1.1092(b)–6T [Removed]**

■ **Par. 4.** Section 1.1092(b)–6T is removed.

**John Dalrymple,**

*Deputy Commissioner for Services and Enforcement.*

Approved: July 1, 2014.

**Mark J. Mazur,**

*Assistant Secretary of the Treasury (Tax Policy).*

[FR Doc. 2014–17009 Filed 7–17–14; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 301

**[TD 9679]**

**RIN 1545–AJ93**

## Information Reporting by Passport Applicants

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations that provide information reporting rules for certain passport applicants. These final regulations apply to certain individuals applying for passports (including renewals) and provide guidance to such individuals about the information that must be included with their passport applications.

**DATES:** *Effective Date:* These regulations are effective on July 18, 2014.

*Applicability Date:* For dates of applicability, see § 301.6039E–1(d).

**FOR FURTHER INFORMATION CONTACT:** Rosy Lor at (202) 317–6933 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Background

On January 26, 2012, the Internal Revenue Service (IRS) and the Department of Treasury (Treasury Department) published in the **Federal Register** (77 FR 3964) a notice of proposed rulemaking (REG–208274–86) (the proposed regulations) that proposed amendments to 26 CFR part 301 under section 6039E of the Internal Revenue Code (Code). Section 6039E provides rules concerning information reporting by U.S. passport and permanent resident applicants, and requires specified federal agencies to provide certain information to the IRS.

The proposed regulations set forth the information a U.S. citizen applying for a U.S. passport (passport applicant),

other than a citizen who applies for an official passport, diplomatic passport, or passport for use on other official U.S. government business, must provide pursuant to section 6039E. They do not address information reporting by permanent resident applicants. The proposed regulations also withdrew a prior notice of proposed rulemaking (REG–208274–86, 1993–1 CB 822) published in the **Federal Register** (57 FR 61373) on December 24, 1992. The proposed regulations are proposed to be effective for applications submitted after the date final regulations are published in the **Federal Register**.

Comments were received on the proposed regulations. No public hearing was requested or held. After consideration of the comments, this Treasury decision adopts the proposed regulations with minor revisions as described in this preamble.

**Explanation and Summary of Comments**

*Scope of Information Reporting by Passport Applicants*

The proposed regulations require a passport applicant, other than an individual who applies for an official passport, diplomatic passport, or passport for use on other official U.S. government business, to provide certain information with his or her passport application pursuant to section 6039E. Specifically, the applicant must provide his or her full name and, if applicable, previous name; permanent address and, if different, the applicant's mailing address; taxpayer identifying number (TIN); and date of birth. A commentator requested that the scope of information be limited to the passport applicant's name, TIN, if any, and foreign country of residence, if any. The final regulations do not adopt this comment. Section 6039E(b)(4) grants the Secretary the authority to require any additional information as he may prescribe. The Department of State (State Department) requires the items of information required by these final regulations as part of its application process. Accordingly, the IRS and the Treasury Department believe that requiring this information is not unduly burdensome to the applicant.

*Penalty for Failure to Provide Information*

The proposed regulations provide guidance on the circumstances under which the IRS may impose a $500 penalty on a passport applicant who fails to provide the required information. Under the proposed regulations, before assessing the penalty, the IRS will provide to the passport applicant written notice of the potential assessment of the penalty, and the applicant has 60 days (90 days if the notice is addressed to an applicant outside of the United States) to respond to the notice. If the passport applicant demonstrates to the satisfaction of the Commissioner or the Commissioner's delegate that the failure to provide the required information is due to reasonable cause and not due to willful neglect, after considering all the surrounding circumstances, then the IRS will not assess the penalty.

A commentator requested clarification with respect to when the period for responding begins to run. In response to the comment, the final regulations provide that a passport applicant has 60 days from the date of the notice of potential assessment of the penalty, or 90 days from such date if the notice is addressed to an applicant outside the United States, to respond to the notice.

A commentator requested that additional guidance be provided with respect to the factors that will be considered in determining whether a passport applicant has established reasonable cause for the failure to provide the required information. The comment was not adopted because this factual determination by the IRS is made on a case-by-case basis and involves consideration of all the surrounding circumstances.

*Other Comments Received*

Commentators requested that the proposed regulations be withdrawn because they may unduly affect the right of U.S. citizens to travel and apply for a U.S. passport. The IRS and the Treasury Department coordinated with the State Department in promulgating the proposed and final regulations. These regulations do not affect the manner in which the State Department processes passport applications, and Code section 6039E requires information reporting by passport applicants for tax administration purposes. Accordingly, the comments were not adopted.

The proposed regulations provide that the rules would apply to passport applications submitted after the date of publication of the Treasury decision adopting these rules as final regulations. A commentator requested that the regulations be effective for applications submitted after January 1st of the year following the date the regulations are published, rather than for applications submitted after the date the final regulations are published, on grounds that section 7805(b) of the Code requires such a delay of the effective date. This comment was not adopted. Section 7805(b), as amended in 1996 by the Taxpayer Bill of Rights 2, only applies with respect to regulations which relate to statutory provisions enacted on or after July 30, 1996. Because section 6039E was enacted in 1986, section 7805(b) does not apply to these final regulations. Furthermore, even if the version of section 7805(b) cited by the commentator were to apply, section 7805(b) does not require the requested delay of the effective date. This is so because the final regulations apply to passport applications submitted after July 18, 2014, which is not before January 26, 2012, the date of the proposed regulations. See section 7805(b)(1)(B). Accordingly, these final regulations adopt the effective/applicability date included in the proposed regulations.

**Special Analyses**

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f), this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

**Drafting Information**

The principal author of this regulation is Rosy Lor of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in their development.

**List of Subjects in 26 CFR Part 301**

Administrative practice and procedure, Alimony, Bankruptcy, Child support, Continental shelf, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Oil pollution, Penalties, Pensions, Reporting and recordkeeping requirements, Seals and insignia, Statistics, Taxes.

**Adoption of Amendments to the Regulations**

Accordingly, 26 CFR part 301 is amended as follows:

## PART 301—PROCEDURE AND ADMINISTRATION

■ **Paragraph 1.** The authority citation for part 301 is amended by adding an entry in numerical order to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * *

Section 301.6039E–1 also issued under 26 U.S.C. 6039E.

■ **Par. 2.** Section 301.6039E–1 is added to read as follows:

**§ 301.6039E–1 Information reporting by passport applicants.**

(a) *In general.* Every individual who applies for a U.S. passport or the renewal of a passport (passport applicant), other than a passport for use in diplomatic, military, or other official U.S. government business, shall include with his or her passport application the information described in paragraph (b)(1) of this section in the time and manner described in paragraph (b)(2) of this section.

(b) *Required information*—(1) *In general.* The information required under paragraph (a) of this section shall include the following information:

(i) The passport applicant's full name and, if applicable, previous name;

(ii) The passport applicant's permanent address and, if different, mailing address;

(iii) The passport applicant's taxpayer identifying number (TIN), if such a number has been issued to the passport applicant. A TIN means the individual's social security number (SSN) issued by the Social Security Administration. A passport applicant who does not have an SSN must enter zeros in the appropriate space on the passport application; and

(iv) The passport applicant's date of birth.

(2) *Time and manner for furnishing information.* A passport applicant must provide the information required by this section with his or her passport application, whether by personal appearance or mail, to the Department of State (including United States Embassies and Consular posts abroad).

(c) *Penalties*—(1) *In general.* If the information required by paragraph (b)(1) of this section is incomplete or incorrect, or the information is not filed in the time and manner described in paragraph (b)(2) of this section, then the passport applicant may be subject to a penalty equal to $500 per application. Before assessing a penalty under this section, the IRS will provide to the passport applicant written notice of the potential assessment of the $500 penalty, requesting the information being sought, and offering the applicant an opportunity to explain why the information was not provided with the passport application. A passport applicant has 60 days from the date of the notice of the potential assessment of the penalty (90 days from such date if the notice is addressed to an applicant outside the United States) to respond to the notice. If the passport applicant demonstrates to the satisfaction of the Commissioner (or the Commissioner's delegate) that the failure is due to reasonable cause and not due to willful neglect, after considering all the surrounding circumstances, then the IRS will not assess the penalty.

(2) *Example.* The following example illustrates the provisions of paragraph (c) of this section.

*Example.* C, a citizen of the United States, makes an error in supplying information on his passport application. Based on the nature of the error and C's timely response to correct the error after being contacted by the IRS, the Commissioner concludes that the mistake is due to reasonable cause and not due to willful neglect. Accordingly, no penalty is assessed.

(d) *Effective/applicability date.* This section applies to passport applications submitted after July 18, 2014.

**John Dalrymple,**

*Deputy Commissioner for Services and Enforcement.*

Approved: June 26, 2014.

**Mark J. Mazur,**

*Assistant Secretary of the Treasury (Tax Policy).*

[FR Doc. 2014–16944 Filed 7–17–14; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Alcohol and Tobacco Tax and Trade Bureau

### 27 CFR Part 9

**[Docket No. TTB–2013–0008; T.D. TTB–120; Ref: Notice No. 139]**

**RIN 1513–AC02**

## Establishment of the Upper Hiwassee Highlands Viticultural Area

**AGENCY:** Alcohol and Tobacco Tax and Trade Bureau, Treasury.

**ACTION:** Final rule; Treasury decision.

**SUMMARY:** The Alcohol and Tobacco Tax and Trade Bureau (TTB) establishes the approximately 690-square mile ''Upper Hiwassee Highlands'' viticultural area in Cherokee and Clay Counties, North Carolina, and Towns, Union, and Fannin Counties, Georgia. The viticultural area does not lie within or contain any other established viticultural area. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

**DATES:** This final rule is effective August 18, 2014.

**FOR FURTHER INFORMATION CONTACT:** Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005; phone 202–453–1039, ext. 175.

**SUPPLEMENTARY INFORMATION:**

### Background on Viticultural Areas

*TTB Authority*

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated various authorities through Treasury Department Order 120–01 (Revised), dated December 10, 2013, to the TTB Administrator to perform the functions and duties in the administration and enforcement of this law.

Part 4 of the TTB regulations (27 CFR part 4) authorizes the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission to TTB of petitions for the establishment or modification of American viticultural areas (AVAs) and lists the approved AVAs.

*Definition*

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features as described in part 9 of the regulations and a name and a delineated boundary as established in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area

United States General Accounting Office

GAO

Report to the Chairman Committee on Ways and Means, House of Representatives

May 1998

# TAX ADMINISTRATION

# Nonfiling Among U.S. Citizens Abroad

GAO/GGD-98-106

1997,[1] and an additional amount based on their housing expenses if they meet certain foreign residency requirements. Nonfilers detected by IRS before filing voluntarily lose their eligibility for the exclusions in some circumstances. (See app. I for additional information on the exclusions and related rules affecting U.S. citizens residing abroad.)

IRS' Office of the Assistant Commissioner (International)—AC (International) is responsible for all international tax matters. To support its mission, AC (International) maintains about 13 full-time personnel at 9 foreign posts of duty. Additionally, some staff who are normally based in the United States are available for temporary tours of duty in foreign countries.

We have responded to two earlier congressional inquiries into nonfiling by U.S. citizens residing abroad. In a 1985 testimony, we noted that our analysis of filing among a limited sample of U.S. citizens in selected countries indicated a potential nonfiling problem.[2] As a result, Congress enacted IRC section 6039E: Information Concerning Resident Status in the Tax Reform Act of 1986. This section includes provisions requiring U.S. citizens applying for passports to provide their Social Security number (SSN), any foreign country of residence, and other information that might be prescribed by the Treasury Department. The intent of section 6039E was that IRS would use this information to identify nonfilers residing abroad.

In May 1993, we reported on IRS' relevant compliance initiatives, the lack of reliable data on U.S. citizens abroad, and IRS' limited use of passport application data as a compliance tool.[3]

## Results in Brief

IRS has not estimated the overall prevalence of nonfiling abroad or the resulting loss of tax revenue, and the data we identified in our review were inadequate to support reliable quantified estimates. Data on the number of U.S. taxpayers residing abroad and the number of returns they file are of uncertain reliability, and the amount of taxes that nonfilers would owe if

[1]The Taxpayer Relief Act of 1997 increased the limitation on the exclusion for foreign earned income from $70,000 to $80,000 in $2,000 increments each year beginning in 1998, and provides that the limitation is indexed for inflation beginning in 2008.

[2]See U.S. Citizens Residing in Foreign Countries and Not Filing Federal Income Tax Returns testimony before the Subcommittee on Commerce, Consumer and Monetary Affairs, House Committee on Government Operations (May 8, 1985).

[3]See IRS Activities to Increase Compliance of Overseas Taxpayers, a report to the Chairman of the Senate Finance Committee (GAO/GGD-93-93, May 18, 1993).

identified U.S. citizens who reside abroad or noted their citizenship on information returns.[20] Additionally, IRS has had difficulty processing and matching foreign information returns due to computer system limitations and because most foreign returns do not include the taxpayer's SSN or are received too late to be processed as part of IRS' information matching program.

IRS noted that it may receive some additional information on U.S. citizens abroad through Qualified Intermediary Agreements with foreign financial institutions beginning in tax year 2000. Qualified Intermediary Agreements, introduced by IRS regulations under IRC section 1441, generally relate to U.S. withholding by foreign financial institutions on U.S. source income paid to foreign persons; but, IRS expects the agreements will also require the foreign institutions to report certain information on U.S. citizens.

## IRS Lacks Collection Authority Abroad

The mechanisms provided to IRS under U.S. law for collecting unpaid taxes, including liens, levies, and seizures, generally cannot be applied against assets that have been transferred to a foreign country. As a result, IRS generally cannot collect unpaid taxes from assets that have been transferred to a foreign country, except for the five countries that have entered into mutual collection assistance agreements as part of tax treaties with the United States—Canada, France, Denmark, Sweden, and the Netherlands. Mutual collection assistance agreements generally provide for each country to use measures available within its own legal system to collect taxes owed to its partner in the agreement. The agreement with Canada was ratified in 1995, and the others were ratified between 1939 and 1948. According to IRS documentation on the program's evolution, the 47-year hiatus between the last two agreements occurred because the Senate indicated in 1948 that it did not favor additional agreements of this type.

## IRS' Limited Use of Passport Application Data

IRC section 6039E was enacted in 1986 to provide IRS with data from passport applications processed by the State Department for use in identifying individuals residing abroad who do not file tax returns. The law required passport applicants to provide their SSNs, foreign country of residence, and other information to be prescribed by Treasury, and established a penalty of $500 for each failure to provide the required

[20]Although IRS has received information on the foreign investments of U.S. citizens residing in the United States, IRS officials believe they have received little such information on U.S. citizens residing abroad. This is because an investor's presumed citizenship in foreign information reporting systems is likely to have been based on their mailing address.