

## PASSPORTS AND THE RULE OF LAW

Readers of *Cracking the Code* have all surely seen the letter from the SSA in the appendix of the book. Back in the early 90's I had collected around 10 such letters from around the country. They all, of course, contained that oh so liberating sentence: "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." Armed with this knowledge I proceeded to challenge the authority of the California DMV to require a SSN to obtain or renew a driver's license. The battle went on for several years resulting in me trying to exist with an expired ID. My solution was to apply for a US passport (I have successfully used the passport as ID for 13 years now, with no problems).

Upon receiving the application, Form DS-11, I was confronted with that hauntingly familiar request, an alleged requirement for a SSN. Having previously taught myself, with the help of my friendly law librarian, how to use the law library, I went to work. It took me about half an hour to find what seems to have eluded every other researcher of 26 USC 6039E: the preamble to the proposed regulations which explicitly details the purpose and scope of the statute.

The truly telling portion of that document reads as follows:

### Purpose and Scope

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 IRS a further source of information regarding these nonfilers and to notify these overseas persons of their continuing duty to file U.S. tax returns.

With this in hand I submitted my application in person at my county clerk's office with no SSN. The middle-aged female bureaucrat immediately noticed the SSN request box was empty and began the usual required by law assertions. Without saying a word I handed her the proposed regulation highlighted for her convenience. She read it several times, holding me in suspense. She finally looked up and said, "Wow, can I take a copy of this." I obliged. I received my passport in four weeks, no if's, and's, or but's.

This liberating experience occurred in 1996. I shared the information with friends and family and moved on to other issues. It wasn't until my cherished ID was set to expire in March 2007 that I revisited the issue again. It turns out that the preamble to the proposed regs which I exposed in 1996 has literally disappeared from the public record. With the help of the internet other references to the purpose and scope of 6039E (see the following EXPLANATION) can be found, but the preamble to the proposed regs can not. It is

interesting that finalized regulations for 6039E still do not exist despite the passing of 22 years since Congress enacted 6039E and that the statute is dependent upon them. Subsection (e) Exemption reads as follows:

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.

It would appear that the IRS is purposely dragging its feet in finalizing the regulations to 6039E because those regs would undoubtedly contain a reference to the purpose and scope of the statute and reveal the stealth misapplication of the statute to citizens living and working in the 50 states. Of course, the IRS's noble purpose for expanding the scope beyond that provided by the statute is to find non-filers of income tax returns via the SSN. That noble purpose is obviously more important than final regulations.

To get a new passport, this time around, I submitted Form DS-82, which is the renewal by mail form. I enclosed an EXPLANATION for not complying with the request for a SSN and sent a letter and copy of the EXPLANATION to the IRS to comply with the penalty portion of the statute (6039E(c)). Again I received my new passport with no if's, and's or but's and not a peep from the IRS. A copy of my EXPLANATION and letter to the IRS follow for edification. Though, such an exhaustive explanation is probably not necessary for positive results. Merely write N/A in the box instead of an SSN and enclose a copy of the preamble and drop the IRS a note indicating that you had reasonable cause for the omission.

Let the IRS and DOS know who's the boss when you first get or renew a passport. The rule of law lends itself again to our salvation.

Gregory Sutton

## EXPLANATION FOR NOT PROVIDING AN SSN ON FORMS DS-11 AND DS-82

Applications for a US Passport (DS-11) and renewal by mail (DS-82) purport to require that a US Citizen living and working in the fifty states of the union must include their SSN at information request #5 of either application, if such number has been previously (and lawfully?) issued. Information request #5 redirects the applicant to the Federal Tax Law Notice on Instruction Page 3. (Note that the word Notice does not appear in the “notice” itself.) The first sentence of the “notice” claims:

Section 6039E of the IRC requires you to provide your SSN, if you have one, when you apply for a US passport or renewal of a US passport.

The use of the nominative and objective singular and plural pronoun of the second person “you” and “your” would at first glance lead someone unfamiliar with the nuances of the written law to conclude that the “notice” was inclusive of all who needed a passport. Those, such as myself, who have studied 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 “notice” and, as shown below, includes only a small percentage of the U.S. citizen population seeking a passport.

A not too laborious research effort back in 1996, when I applied for my first passport, revealed that 26 USC 6039E and its regulations are quite limited in scope and purpose. Starting with the IRC at 6039E:

(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 (26 USC 6039E)? And who (what class of individuals) has the Secretary exempted?

As per the Code we go to the Secretary’s regulations to see the proper purposes and exemptions:

Proposed Sect. 301.6039E – 1 Information reporting by passport and permanent residence applicants. [For Preamble, see ¶ 151,471]

It's hard for me to get past a "Preamble" reference as I know what the word means:

**Preamble:** An introductory statement or preface; especially, the introduction to a formal document, statute, etc., explaining its purpose. Funk and Wagnalls Standard College Dictionary.

So when I go to ¶ 151,471 I find the following:

#### Purpose and Scope

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 IRS a further source of information regarding these nonfilers and to notify these overseas persons of their continuing duty to file U.S. tax returns.

As I am not a resident alien or a U.S. citizen or national living abroad, I can only conclude that Section 6039E of the IRC has no applicability to me and thus there exists no lawful requirement for me to supply a SSN as I am ostensibly exempted by the Secretary of the Treasury pursuant to his Preamble for 26 CFR 301.6039E. The words of the law mean what they say and say what they mean.

Further, I have no current intention of living and working abroad. I use the U.S. issued Passport as ID for both domestic and vacationing purposes. I have no current intention of leaving this country's borders to engage in foreign commerce over which Congress has exclusive jurisdiction.

The above research was done in 1996 before the internet was available and was conducted in my local law library using the statutes and regulations as published by CCH. A copy of those statutes and regulations, from their library sources, is attached to this EXPLANATION.

Now that we have the internet and the supposed publishing of all existing law via the internet, a current search is informative.

1) 26 USC 6039E is unchanged since 1996.

[http://www.law.cornell.edu/uscode/html/uscode26/usc\\_sec\\_26\\_00006039---E000-.html](http://www.law.cornell.edu/uscode/html/uscode26/usc_sec_26_00006039---E000-.html)

2) The corresponding regulations cannot be found on the internet.

[http://www.law.cornell.edu/usc-cgi/usc\\_cfr.cgi?title=26&section=6039E](http://www.law.cornell.edu/usc-cgi/usc_cfr.cgi?title=26&section=6039E)

3) The IRS is evidently still involved in the rulemaking process for 26CFR301.6039E-1,

<http://a257.g.akamaitech.net/7/257/2422/14mar20010800/edocket.access.gpo.gov/2003/03-16604.htm>

and

<http://a257.g.akamaitech.net/7/257/2422/11dec20060800/edocket.access.gpo.gov/ua061211/ua061016.txt>

This last link indicates Final Action on these proposed regulations is to be March '07.

4) A 1998 GAO report: TAX ADMINISTRATION Nonfiling Among U.S. Citizens Abroad contains statements describing the intent of section 6039E.

<http://www.gao.gov/archive/1998/gg98106.pdf>

“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.”

These statements coincide with those of the Secretary as to section 6039E’s purpose and scope.

It should be plain to see that I and millions of U.S. Citizens who live and 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 its called extortion. Perhaps that is why it has taken almost 20 years to finalize the corresponding regulations. It will be interesting indeed to see if the Preamble to 26 CFR 301.6039E-1 will be included in the final version and if it will be accessible via the internet for all to see.

For Truth and Liberty,

Gregory Lane Sutton

Dated

Attachments:

Copies of 26 USC 6039E, 26 CFR 301.6039E-1 and its corresponding Preamble

CC: Quyen Huynh, Attorney-Advisor  
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February 23, 2007

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RE: NOTICE OF PASSPORT APPLICATION DATED 02/23/07

Dear Sir/Madam/Miss:

This is proper notice that I have executed a form DS-82 on February 23, 2007, intentionally lacking a SSN. The EXPLANATION with copies of the applicable statutes and regulations attached to that form as sent to the National Passport Center is enclosed and provides ample reasonable cause for the willful omission.

Please, if possible, send me a copy of the complete 26CFR301.6039E-1 (including the Preamble) at the current Final Rule Stage of rulemaking; my curiosity is getting the best of me.

Sincerely,

Gregory Lane Sutton

Enclosures:

EXPLANATION FOR NOT PROVIDING AN SSN ON FORMS DS-11 AND DS-82  
Copies of 26 USC 6039E, 26 CFR 301.6039E-1 and its corresponding Preamble

## Information Reporting by Passport and Permanent Residence Applicants Reg §301.6039E-1

### BACKGROUND

This document contains proposed amendments to the Regulations on Procedure and Administration (26 CFR part 301), under section 6039E of the Internal Revenue Code of 1986 (26 U.S.C. 6039E), as added by section 1234 of the Tax Reform Act of 1986 (Pub. L. 99-514), as amended by section 1012(o) of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100-647, Nov. 10, 1988). The proposed amendments to the regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1986 (6SA Stat. 917, 26 U.S.C. 7805) and under the authority contained in section 6039E. The regulations are proposed to be applicable to all passport applications submitted after January 31, 1987 and immigration applications submitted after December 31, 1989, that solicit the information described in section 6039E.

### STATUTORY FRAMEWORK

Section 6039E of the Internal Revenue Code of 1986 requires that passport and permanent residence applicants include certain information with their applications. The information required of passport applicants in the statute is different from that required of permanent residence applicants. The Secretary of the Treasury has authority to require additional information from either of the above mentioned groups. The statute requires a TIN (Taxpayer Identification Number) (if any) from both passport applicants and applicants for permanent residence, but also requires special information from each of these two groups. For passport applicants, the foreign country of residence (if any) must be stated, and for permanent residence applicants, a statement as to whether the applicant is required to file a tax return for any of that individual's three most recent taxable years must be given. Section 6039E requires and authorizes the obtaining of three categories of information which are grouped into "lists" in the proposed regulations - a list for permanent residence applicants, a list for passport applicants, and a list of "possible" information items which may be required of either group (or both) at a later date under the authority of section 6039E(b)(4). The statute imposes a \$500 penalty on any applicant who fails to provide the required information without reasonable cause for such failure. The Department of State and the Immigration and Naturalization Service are required to share the information collected in the course of processing passport and permanent residence applications with the Treasury Department, and are also required to identify persons refusing to comply. Finally, Congress gave the Secretary the authority to exempt any class of individuals from these reporting requirements if reporting by that class is unnecessary to carry out the purposes of section 6039E.

Section 1012(i) of the Technical and Miscellaneous Revenue Act of 1988 exempted from the information-sharing requirement information subject to the Immigration Reform and Control Act of 1986 (IRCA); (Section 245A of the Immigration and Nationality Act, 8 U.S.C. 1255a). This change, which added the last sentence of section 6039E(d), has been implemented in the proposed regulations by both exempting any information gathered in connection with IRCA from the information sharing requirements and also by excepting such information from the reporting requirements by definition.

### PURPOSE AND SCOPE

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. With respect to persons applying for permanent residence, Congress was concerned that new residents might derive income from foreign sources not subject to normal information reporting or withholding. Therefore, Congress concluded that the Internal Revenue Service needed an additional tax compliance measure for these persons. The new reporting provisions give the Internal Revenue Service information about these persons that would otherwise be unavailable.

### EXPLANATION OF PROVISION

The proposed regulations in this document:

- (1) prescribe the information to be gathered by processing agencies (generally, the Department of State and the Immigration and Naturalization Service (INS) of the Department of Justice),
- (2) exempt certain applicants and applications from section 6039E and this section,
- (3) provide alternate procedures for agencies reporting section 6039E information to the Internal Revenue Service,
- (4) require that information transmitted by other agencies include information concerning any persons who fail to comply with the information reporting requirements, and
- (5) restate the penalties imposed on nonexempt applicants who fail to comply.

In addition, the proposed regulations provide rules and examples concerning the possible unavailability of information to passport and immigration applicants.

The Department of State (through its domestic passport agencies and through its embassies and consulates abroad) processes all passport applications. Applications for lawful permanent residence, or "immigrant visa" applications, are processed by both INS (domestically) and the Department of State (overseas). Forms used in these processes have been (or are in the process of being) modified to request information required by section 6039E and these proposed regulations. In some instances, the forms request additional information pursuant to the authority granted in section 6039E(b)(4).

### SPECIAL ANALYSES

It has been determined that this proposed rule is not a major rule as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(0) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

### COMMENTS AND REQUEST FOR A PUBLIC HEARING

Before adopting these proposed Regulations, consideration will be given to any written comments that are submitted timely (preferably a signed original and eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments on the pro-

posed rules. Notice of the time and place of that hearing will be published in the FEDERAL REGISTER . DRAFTING INFORMATION

The principal author of these proposed regulations is Ricardo A. Cadenas .of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal

Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing these regulations, on matters of both substance and style.

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