



Inadmissibility of Tax-Based Citizenship Renunciants

November 30, 2015

Fiscal Year 2015 Report to Congress



Homeland
Security

Message from the Secretary

November 30, 2015

I am pleased to present the following report, “Inadmissibility of Tax-Based Citizenship Renunciants.”

This report was compiled pursuant to language in Senate Report 113-198 accompanying the *Fiscal Year 2015 Department of Homeland Security (DHS) Appropriations Act* (P.L. 114-4). The report details the Department’s efforts to implement section 212(a)(10)(E) of the *Immigration and Nationality Act* (the Act), 8 U.S.C. § 1182(a)(10)(E).



Under section 212(a)(10)(E) of the Act, DHS has the authority to deny admission to former U.S. citizens who are deemed to have expatriated for purposes of tax avoidance. The Committee directed the Secretary to report on the steps that the Department is undertaking to enforce this law, including a schedule for issuing guidance or regulations, if necessary.

Pursuant to congressional requirements, this report is being provided to the following Members of Congress:

The Honorable John Carter
Chairman, House Appropriations Subcommittee on Homeland Security

The Honorable Lucille Roybal-Allard
Ranking Member, House Appropriations Subcommittee on Homeland Security

The Honorable John Hoeven
Chairman, Senate Appropriations Subcommittee on Homeland Security

The Honorable Jeanne Shaheen
Ranking Member, Senate Appropriations Subcommittee on Homeland Security

Should you have any questions, please contact the Department’s Deputy Under Secretary for Management and Chief Financial Officer, Chip Fulghum, at (202) 447-5751.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jeh Charles Johnson". The signature is stylized and somewhat cursive, with a large loop at the beginning and a long, wavy tail.

Jeh Charles Johnson

Executive Summary

Senate Report 113-198 accompanying the *Fiscal Year 2015 Department of Homeland Security Appropriations Act* (P.L. 114-4) requires that the Secretary submit a report on the steps that the Department has undertaken to enforce section 212(a)(10)(E) of the *Immigration and Nationality Act* (the Act), including a schedule for issuing guidance or regulations, if necessary. Section 212(a)(10)(E) of the Act, which was enacted in 1996, provides for the inadmissibility of persons who officially renounce U.S. citizenship for the purpose of avoiding taxation by the United States.

The Department has carefully considered the policy, legal, and operational challenges to implementation of section 212(a)(10)(E) of the Act. The Department has engaged closely with the Department of State and the Department of the Treasury, including the Internal Revenue Service, in efforts relating to the provision's enforcement.

Despite these efforts, implementation of section 212(a)(10)(E) of the Act has been hindered by numerous policy, operational, and legal complexities and challenges. This report outlines the steps taken by the Department and details the alternatives considered for the implementation of this inadmissibility provision.



Inadmissibility of Tax-Based Renunciants

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I. Legislative Language

This report is submitted pursuant to Senate Report 113-198 accompanying the *Fiscal Year 2015 Department of Homeland Security Appropriations Act* (P.L. 114-4).

Senate Report 113-198 states:

TAX-BASED CITIZENSHIP RENUNCIANTS

Under section 212(a)(10)(E) of the Immigration and Nationality Act, the Department of Homeland Security has the authority to deny admission to former U.S. citizens that are deemed to have expatriated for purposes of tax avoidance. In over a decade, the Department has not issued regulations nor has it undertaken any significant steps to enforce this provision. The Committee directs the Secretary to report within 90 days on the steps the Department is undertaking to enforce this law, including a schedule for issuing guidance or regulations, if necessary.

II. Introduction

Enacted in 1996, section 212(a)(10)(E) of the *Immigration and Nationality Act* (the Act) provides for the inadmissibility of persons who officially renounce U.S. citizenship for the purpose of avoiding taxation by the United States.¹

The Department of State reports that 1,335 individuals renounced U.S. citizenship in the first quarter of Fiscal Year 2015; 3,415 persons renounced in Fiscal Year 2014; 2,999 renounced in Fiscal Year 2013; and 932 renounced in Fiscal Year 2012. Since 2002, two individuals who admitted to having renounced for tax avoidance purposes were found to be inadmissible under section 212(a)(10)(E) of the Act.²

The Department of Homeland Security, in close coordination with the Departments of State and the Treasury, has considered carefully the policy, legal, and operational challenges to implementation of section 212(a)(10)(E) of the Act.³

¹ Inadmissibility under section 212(a)(10)(E) may be waived for aliens seeking admission as a nonimmigrant. *See* the *Immigration and Nationality Act* § 212(d)(3)(A), 8 U.S.C. § 1182(d)(3)(A). It also may be waived in other limited circumstances. *See, e.g.,* the *Immigration and Nationality Act* §§ 209(c) (adjustment of status of refugees and asylees to that of a lawful permanent resident), 212(d)(14) (U nonimmigrant status for victims of certain criminal activity); 8 U.S.C. §§ 1159(c), 1182(d)(14). Congress, however, specifically has provided that section 212(a)(10)(E) may not be waived for purposes of granting T nonimmigrant status (victims of trafficking in persons) or adjustment of status of a T nonimmigrant to that of a lawful permanent resident. *See* INA §§ 212(d)(13)(B)(ii), 245(l)(2)(B); 8 U.S.C. §§ 1182(d)(13)(B)(ii), 1255(l)(2)(B).

² Five additional individuals were identified as possibly inadmissible on the basis of section 212(a)(10)(E). One was served a notice to appear, but was not placed in removal proceedings. The four others were paroled, one of whom was deferred for inspection and later admitted.

³ The former Immigration and Nationality Service (INS) drafted a proposed rule to implement section 212(a)(10)(E) and submitted it to the Office of Management and Budget in 2000, but it subsequently was withdrawn. The proposed rulemaking followed extensive collaboration between the Department of State, Internal Revenue Service, and the Department of Justice (INS and Tax Division). No further efforts to promulgate rules relating to section 212(a)(10)(E) since have been undertaken.

III. Inadmissibility of Tax-Based Citizenship Renunciants

An extensive interagency review of the inadmissibility ground considered possible options for a more robust implementation of the provision, resulting in the following conclusions:

- Although the inadmissibility determination is the Department of Homeland Security's (DHS) to make, official renunciations of U.S. citizenship and visa applications occur before the Department of State (DOS) (at consular posts abroad), in turn dictating close cooperation and coordination between the Departments.
- Confidentiality laws prevent disclosure of tax information to DHS or DOS absent a voluntarily signed disclosure from the renunciant.
- Although the U.S. internal revenue code, at 26 U.S.C. §§ 877, 877A, currently applies an "expatriate tax" to renunciants who trigger objective standards based on average annual net income tax, net worth, and past tax compliance, it would be difficult to rely on the imposition of such a tax as the basis for determining that a person who is subject to such a tax subjectively renounced citizenship for tax avoidance purposes, as section 212(a)(10)(E) requires, particularly if an individual in fact complied in paying any liability resulting from the expatriate tax provisions.
- At the time that section 212(a)(10)(E) was enacted, expatriate tax liability under relevant provisions of the Internal Revenue Code generally was based on whether an individual's intent upon expatriating was to avoid U.S. taxation, but Congress since has amended the tax code to eliminate a direct connection between expatriate tax liability and a renunciant's intent.

Interagency coordination between DHS and DOS operations in this area is improving continuously, but there currently are no advisable options for altering enforcement of the inadmissibility ground against persons who do not affirmatively admit to renouncing their U.S. citizenship for the purpose of avoiding U.S. taxation.

In particular, DHS and DOS have determined that it is not advisable to implement section 212(a)(10)(E) through a rebuttable presumption that persons renounced citizenship for U.S. tax avoidance purposes where, for example, they failed to pay the expatriate tax (if it could be determined that an individual is subject to it), they acquired a

tax windfall shortly after expatriation, or there is evidence of acquiring residence in countries that may be considered tax havens.

Among other inadequacies, any such presumption likely would be either highly under-inclusive of persons who in fact renounce citizenship for tax avoidance purposes, over-inclusive in capturing persons who did not in actuality renounce citizenship for tax avoidance purposes yet meet the requirements for the presumption, or both. Moreover, even if a renunciant were to waive Treasury confidentiality provisions, such that DHS and DOS might review specifics of an individual's Internal Revenue Service filings, DHS lacks the expertise and resources to review tax filings meaningfully or engage in complicated tax liability analysis, involving both domestic and foreign tax law to determine whether a section 212(a)(10)(E) inadmissibility presumption could be rebutted.

IV. Conclusion

Despite the legal, operational, and policy challenges to the full implementation of section 212(a)(10)(E) of the *Immigration and Nationality Act*, the Department of Homeland Security and the Department of State remain committed to continuing to strengthen lines of communication, improve information sharing, and develop more consistent protocols to ensure that both Departments are aware when a renunciant admits that he or she renounced U.S. citizenship for the purpose of U.S. tax avoidance.