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PERSPECTIVE

Expats' tax dilemma

By Julie L. Kessler

It is true that I have an abnormal relationship with my passport. When I travel, I somehow, irrationally, feel safer simply knowing it's tucked away in my shoulder bag. And when I'm far away from home, I flip the pages and stroll down memory lane looking at the foreign entry stamps and visas while remembering those who shared my travels, or the years I spent abroad as an expatriate.

No doubt this abnormality is genetic; I inherited it squarely from my parents. It stems from the fact that I actually remember when my mother became a U.S. citizen — I was five years old. I also remember my father often recounting with pointed pride and complete gratitude the story of the day he became a U.S. citizen, shortly after World War II, in a dusty little spit of a town in central Georgia, going on to serve proudly in the U.S. Army and ultimately being buried in a VA cemetery. In my father's case, that prized U.S. passport quite literally saved his life, and those of his parents and siblings, allowing them to escape Nazi occupied Austria.

With this for DNA, I couldn't possibly imagine a situation in which I would ever even consider voluntarily giving up my treasured blue-and-gold. Though honestly, I admit that right now I am more than just a bit shaken.

American expatriates — those U.S. citizens who live outside our borders — are a unique lot. There is certainly no one-size-

fits-all description of an expat. Some go abroad for work, some go for love, some for adventure, some for a change in the usual and sundry, some to escape, and some for reasons that include elements of all of the above. However, one common thread runs through the fiber of most expats: By default, the expat becomes a de facto private-citizen U.S. diplomat, no foreign service examination required or taken.

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It can take a few months or may take a few years. Often it just creeps up on you viscerally without much notice. You're at a party and someone says something about the U.S. It could be cultural, social, economic, agricultural or technical, and all of a sudden all heads turn to you for a response. Now, you may know diddly-squat about the futures market in Chicago, where in the South okra grows, or why it is that Las Vegas isn't the capital of Nevada, but you are certainly expected to know, or at least to have opinions on a vast number of topics, about some of which you frankly couldn't care less. Moreover, one often finds oneself in the odd predicament of defending certain policies or politicians that you abhor or never actually voted for, simply



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because you are the only American present. And somehow, it seems that you are compelled to do it. It just goes with the territory.

Sometimes, though, this simply cannot be done. This may indeed be one of those times. The Foreign Account Tax Compliance Act (FATCA), approved in 2010, was aimed at reeling in tax evaders and money launderers. It imposes strict reporting requirements on U.S. citizens with significant assets overseas. FATCA also requires that all foreign banks disclose to the U.S. government information on accounts held by Americans. However, FATCA has resulted in American expats being denied bank and brokerage accounts, business loans and mortgages by foreign financial

institutions that don't want the burden of dealing with the act. Some Americans have had retirement accounts summarily closed by foreign banks unwilling or unable to comply. In some instances, expats have been compelled to disclose financial information about loved ones even if those people are not U.S. citizens. This has resulted in many foreign spouses removing themselves from shared bank accounts. Often, foreign banks simply refuse to do any business at all with families where one spouse is an American expat.

This is not a tiny problem. To put it in context, there are between 6 million and 8 million U.S. citizens residing abroad, many of whom live fairly ordinary lives on fairly ordinary foreign soil.

The U.S. is one of the few countries in the world that has worldwide taxation. In other words, if you are a U.S. citizen, regardless of what country you reside or work in, you are subject to U.S. taxes. Reigning in tax evaders, money launderers, and those seeking to avoid the reach of our laws by funneling funds overseas is thus appropriate, logical and sensible.

What is totally inappropriate, illogical, and not at all sensible, however, is making life incredibly difficult for expats, and in several cases making them obscenely vulnerable, in order to catch a few crooks.

In one case, a New York native who married a German national, and for the past 25 years has lived in Germany with her husband and the couple's three children, was forced to put all of the couple's retirement funds in her husband's name in order to reduce the risk that their financial institution in Germany would close their accounts because she's a U.S. citizen. What a Morton's Fork: put all of your assets in a non-U.S. spouse's name to avoid financial ruin at the hands of FATCA, and risk financial devastation if some-

thing happens to your non-U.S. spouse, or if the marriage ends.

In another case, a U.S. citizen moved in 2001 to Switzerland following the dot-com bust and the loss of his California job. Now a successful and employed homeowner there with a Swiss mortgage, after FATCA he was unable to secure additional financing for the purchase of a retirement home in Florida. Ultimately he secured American financing, but he is now concerned that FATCA will adversely affect his long-time Swiss mortgage on his primary residence.

As a result, many long-term expats are making the heart-wrenching decision to give up their U.S. citizenship. That's what the California dot-commer did, and that is what the New Yorker is thinking of doing. I can barely imagine the turmoil and conflict in making such a decision.

Reducing tax fraud is important and commendable, but the net result of the FATCA legislation appears to be complete overkill. As former U.S. Supreme Court Justice Potter Stewart wrote back in 1964 in an entirely different context,

"I know it when I see it." This would seem to apply here; fairness can be seen, as can its nasty sibling, unfairness. A U.S. citizen residing abroad should not have to choose between giving up American citizenship and possessing the normal financial relationships that we have all come to expect following years of hard work, payment of taxes, and voting, even from afar. FATCA also does not take into account that many Americans residing overseas provide an invaluable and unpaid service to our country: that of private-citizen U.S. diplomats in their host country. And they may often be the only American whom some foreigners will get to know.

These awful choices could have been mine. I could so easily have stayed in France (or Hong Kong or Japan), but, for a multitude of reasons, returned to the U.S. I love and trust my husband beyond measure, but there is no doubt that I would be utterly unable to throw caution to the winds and remove my name from our assets. I simply could not, and would not do it. Sorry, husband. I also love and cherish my U.S. pass-

port with a passion understood by those with genetic histories similar to mine. But given the choices these American expats and countless others have made and will face going forward as mandatory compliance with FATCA becomes entrenched in their everyday lives, I can now say that had I been living abroad and in their shoes when this happened, I, too, for the very first time in my life, would at least have considered the possibility of permanently saying au revoir. Sorry, Dad.

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