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EXPECT THE BEST

Fee for Renouncing United States Citizenship Increases Significantly

by Henry J. Chang
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Henry J. Chang is a partner in the firm's Immigration Law group. He is admitted to the practice of law in the Province of Ontario and the State of California. Henry is also an Executive Member of the Canadian Bar Association National Citizenship & Immigration Law Section. A recognized authority in the field of United States and Canadian immigration law, he lectures extensively on the subject in both the United States and Canada.

Henry may be reached directly at 416.597.4883 or hchang@blaney.com.

On August 29, 2014, the U.S. Department of State ("DOS") published an interim final rule in the Federal Register, which raised the fee for processing renunciations of United States citizenship from US$450 to US$2,350, a 522.22% increase. This new fee became effective on September 6, 2014.

The obvious reason for this fee increase is to discourage dual citizens from renouncing their United States citizenship. During the past two years, renunciations of United States citizenship have increased significantly.

Every quarter, the U.S. Department of the Treasury publishes the names of all individuals who have expatriated. For the first two quarters of 2014, the total number of individuals who expatriated was 1,577. The total number of individuals who expatriated in 2013 was 2,999. In 2012, the total was only 932.

It is widely believed that this increase in expatriations is due to the United States' aggressive global tax reporting obligations, which includes the *Foreign Account Tax Compliance Act* ("FATCA"). Among other things, FATCA requires foreign financial institutions and U.S. withholding agents to implement new procedures for tax information reporting and withholding, account identification, and documentation. The objective of these procedures is to identify U.S. persons who are evading U.S. tax obligations using financial accounts held outside of the United States.

The rush to expatriate has created backlogs for renunciation appointments at United States consular posts in Canada. As a result, it is currently not possible to schedule a renunciation appointment until the beginning of 2015.

Many of these proposed renunciants are Canadian citizens who believed that they had lost their United States citizenship years ago. However, as a result of FATCA, they have recently obtained formal legal advice and discovered that they are still United States citizens.

Individuals who intend to renounce their United States citizenship should be aware that, as a result of 1996 amendments to the *Immigration and Nationality Act*, a former U.S. citizen who renounces United States citizenship (on or after September 30, 1996) for the purpose of avoiding U.S. taxation will be considered inadmissible to the United States. In light of this fact, care should be taken to properly document the reason for the renunciation in order to avoid this ground of inadmissibility. Although this ground of inadmissibility is not being aggressively enforced at the present time, this may change in the future.

In some cases, it will be possible for an individual to argue that he or she has already lost U.S. citizenship by operation of law. If the individual is successful, DOS will issue a Certificate of Loss of Nationality, retroactive to the date of the prior loss.

Arguing a prior loss of United States citizenship is preferable to renouncing because it will avoid the potential ground of inadmissibility that could result from a formal renunciation. It could also reduce or eliminate the individual's potential U.S. tax obligations. For example, a former U.S. citizen who successfully establishes that he or she automatically lost citizenship by operation of law ten years ago would have ceased to have U.S. tax obligations as of that prior date.

In conclusion, individuals who believe that they lost their United States citizenship years ago but do not already possess a Certificate of Loss of Nationality should consult with a qualified United States immigration lawyer to determine if they are still United States citizens. Even if they did lose their U.S. citizenship due to a prior expatriating event, they should apply for a Certificate of Loss of Nationality in order to properly document this loss.

If they are still U.S. citizens, they may then decide to formally renounce their United States citizenship at a consular post. However, if they do, they should seek guidance from a qualified United States immigration lawyer to ensure that the renunciation does not result in their inadmissibility at some point in the future.

Within the Province of Ontario, a qualified United States Immigration Lawyer must be admitted to the practice of law in the United States and must also possess a Foreign Legal Consultant Permit issued by the Law Society of Upper Canada. Merely being an Ontario lawyer or paralegal is not sufficient.

Any other individual in Ontario who represents a client in a U.S. renunciation matter (or any other U.S. legal matter) commits an offence under the *Law Society Act* and is subject to a fine of up to $25,000 for a first offense and $50,000 for each subsequent offence. Unfortunately, the Law Society of Upper Canada does not enforce this law so the adage "buyer beware" applies here. ■