March 6, 2013

This matter is complicated so if you are in a rush or distracted, please read it later.

The Ways and Means Committee has a mission to be a voice for the senior citizens in the US (including me). That involves making sure Social Security and Medicare don't run out of funds, I thought you might be interested in a matter where the IRS is not collecting substantial income and payroll taxes. The law has been on the books since 1936. If they collected this money, it might help the Social Security System and Medicare systems stay solvent. I have written to the US Tax Inspector General (the guy that audits the IRS) and others that oversee the IRS and write the tax laws. My letters have gone unanswered. So, I thought I would turn to you. If you care about these things, perhaps your influence can make something positive happen. Yes, this tax law has been around since 1936 and unenforced. In your tax overhaul, either repeal it or tell the IRS to enforce it.

Let me explain the rules I am talking about.

In 1936 the US law makers passed a law that basically said to non-US executives and non-US companies – if you earn money when you are in the US then you need to pay US income and payroll taxes on that income – regardless of where you collect your paycheck or where you usually live. The procedure was to be simple. Before a visiting executive left the US they were to report to an IRS office and present a preliminary computation of tax, and pay the tax. They would get a receipt (called a "sailing permit"). They were to give that receipt to an IRS agent as they physically left the US. Those laws have never been actively enforced by the IRS. Why not? Doesn't anyone care?

Please note – in almost all cases around the world, if a worker pays taxes to one country, they pay less taxes in their home country. So, this is a zero sum game for the executives. Since the US is the biggest economy in the world operating on trade deficits, we get short changed when these workers don't pay the US at all.

When anyone comes to the US from abroad on an airplane (US citizens and everyone else) the cabin attendants hand out a piece of paper that asks everyone to declare any items subject to customs (like that nice bottle of Scotch). The customs officer then looks things over and makes sure the duty is paid – pronto – BEFORE you can come into the US. The cabin attendants DO NOT hand out a piece of paper that says if you are not a US citizen or tax resident and you are in the US on business you need to pay US income and payroll taxes and explain how to do that. Why not? Is there some "Don't ask, don't tell" rule somewhere? The least the IRS could do is make sure each of these people are specifically told to pay the tax.

In fact the IRS never tells these visitors directly they should be paying tax when they come to the US unless they want to spend a lot of time searching for it on the IRS website. In fact there is no one at the air terminals to collect the sailing permits from those executives that do have them ready to hand over. Furthermore, no one is taking down the identification information from the departing executives without sailing permits so the IRS doesn't know who they are. If they knew, they could write them a letter and ask for a return and the tax (and threaten that they can't come back to the US ever again).

In 1936, the number of annual visitors from other countries was tiny – maybe that is why they didn't get this procedure up and running. But, the General Accounting Office reported that in 2007 about 9.5 million people visited the US and only 675,000 filed US income tax returns. I am sure you will agree that the world's businesses don't send minimum wage executives to the US on business. So, that means about 9 million (give or take) workers came and went and never paid a dime in tax. If the average ***income and payroll tax*** were, say, a mere $1,000 from say 9 million executives that would be ***a cool $9 BILLION in lost tax revenue*** – **EVERY YEAR!** And as a bonus, the IRS could get a list of the worker's employers and ask them to file business tax returns, too! What a deal! No telling how much more tax that might bring in.

I am confident that the majority of the 675,000 returns that were filed in 2007 were filed mostly by foreign students and scholars (F&J visa holders). Just go to any US educational institution's website and you can see the schools have made sure these foreign nationals are filing their tax returns. I understand there are about 500,000 foreign students and scholars in the US at any one time. It is just the remaining 9 million visiting executives that are not filing. But these guys don't pay taxes – they don't make any real income.

You can't get on an airplane in the US without going past a TSA agent. How easy it would be for the IRS to have TSA collect those sailing permits today! And, if someone doesn't have a permit the TSA can just send a copy of their passport to the IRS to send one of their "or else" letters. Is that too difficult?

There is no plausible explanation why the IRS doesn't hand out notices to the arriving visitors or have TSA collect the permits. If you decide to talk to anyone, make absolutely positive they understand the question (they should be someone from the International Non-Resident Alien Tax Office). And, consider talking to me first so I can prepare you for the discussion. Like I said, this is complicated so you need to understand a few things to get to the bottom of this. Of course, if you want any supporting materials to anything I have said, don't hesitate to ask – I spent 40 years as a cross border tax consultant and can guide you through the IRS booklets, applicable Internal Revenue Code sections, Treasury Regulations etc. Your voters will love you even more when you bring home the money.

Yours very truly,
THOMAS J SPOTT
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