RICHARDSON KISH REVENUE RAISING MEASURES APRIL 15, 2015 – INTERNATIONAL TAX

A SUBMISSION TO THE SENATE FINANCE COMMITTEE INTERNATIONAL TAX WORKING GROUP

by

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APRIL 15, 2015

This is submission 5 of 7 total submissions.

The other six submissions are:

(1) "Richardson Kish Main Citizenship Taxation April 15, 2015 International Tax"

(2) "Richardson Kish Video Testimonials of Americans Abroad - April 15, 2015 - International Tax"

(3) "Richardson Kish Comments of Americans Abroad on Citizenship Taxation - April 15, 2015 - International Tax"

(4) "Richardson Kish The S. 877A Exit Tax - April 15, 2015 - International Tax"

(6) "Richardson Kish Mutual Fund Comparison: Canada vs. United States – April 15, 2015 - International Tax"

(7) "Richardson Kish Complaint to the United Nations Re: Citizenship Taxation – April 15, 2015 – International Tax"

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On April 15, 2015, John Richardson and Stephen Kish sent seven submissions to the Senate Finance Committee.

Although the seven submissions are related, each submission is separate from the others.

Submissions 2-7 are Appendices to the Submission 1 - the Richardson Kish Main Citizenship Taxation submission:

1. Richardson Kish Main Citizenship Taxation - April 15, 2015 - International Tax

2. Richardson Kish Video Testimonials of Americans Abroad - April 15,2015 - International Tax

3. Richardson Kish Comments of Americans Abroad Citizenship Taxation - April 15, 2015 - International Tax

4. Richardson Kish The S. 877A Exit Tax - April 15, 2015 - International Tax

5. Richardson Kish Revenue Raising Measures - April 15, 2015 - International Tax

6. Richardson Kish Mutual Fund Comparison: Canada vs. United States – April 15, 2015 - International Tax

7. Richardson Kish Complaint to United Nations Re: United States Citizen Taxation

This is Submission #5 with the title "Richardson Kish Revenue Raising Measures -- April 15 2015 -- International Tax"

REVENUE RAISING MEASURES THAT ARE DISCRIMINATORY

In recent years, the U.S. Congress has passed legislation that has had serious consequences for Americans abroad (2004, 2008, and 2010). In all three cases, measures have been adopted that severely limit life choices and that have the effect of driving U.S. citizens abroad to renounce their U.S. citizenship. What is particularly ironic is that these measures are provisions to fund programs that do not benefit Americans abroad in any way.

At best, this can be seen as unintentional and its effects as “collateral damage.” If intentional, absent any modifying provisions, these Acts will continue to isolate American abroad from the Homeland and create havoc in their lives and those of their families.

In 2004, Congress passed The American Jobs Creation Act (AJCA). The purpose of the Act is clear in its long title: “An Act To amend the Internal Revenue Code of 1986 to remove impediments in such Code and make our manufacturing service and high-technology businesses and workers more competitive and productive both at home and abroad.”

What is not evident in the title is the restrictive aspect as applied to “citizenship.” Previously, citizenship was designated by immigration status. One either was a citizen by birth, lineage, naturalized as one or if chosen, relinquished it. In 2004, in order to raise funds for jobs for Homelanders, the IRS Code was amended to create the “new” dual-status of Americans abroad; “Tax Citizen.”

The establishment of the objective tests replaced the need to determine if the expatriation was due to tax avoidance. It is no longer “illegal” to leave the U.S. for tax reasons yet the government, mainstream media as well as the compliance industry, continue to promote this misconception, reinforcing the (incorrect) cliché that anyone who leaves the U.S./lives outside the U.S. is a “tax cheat.”

This particular situation has lead to strong feelings of outrage and distrust as Americans abroad feel they are viewed as “fatcats,” criminals and tax scofflaws.

Some observations from a study conducted by Dr. Amanda Klekowski von Koppenfels of the University of Kent in Brussels (*Executive Summary: Survey of Citizenship Renunciation Intentions Among US Citizens Abroad, February 2015):*

http://www.kent.ac.uk/brussels/documents/kvksurveyresults.pdf

*“Of those who have renounced or relinquished US citizenship (142 of the total respondents), nearly half (43%) have annual **pre-tax household incomes of under $100,000 (USD).”***

"More than one-third ***(39%)*** *of all respondents* ***had lived in their current country of residence for 20 years or more.*** *The primary reason (33%) for moving to that country was to be with a* ***spouse or partner,*** *followed by* ***employment*** *(26%).* ***21% left the US as children."***

A more punitive piece of legislation appeared in 2008 as the "H.E.A.R.T. Act" (Heroes Earnings Assistance and Relief Tax Act). This bill was designed to help veterans of military service with many of the challenges they face when returning to civilian life. Ironically enough, their "return" was to be funded by the "departure" of those Americans who wished to relinquish their U.S. citizenship.

Citizens who could not pass an income test (tax liability over $150k indexed to inflation); as asset test ($2 million USD) or a tax compliance test (5 years), must have a deemed disposition of all assets. Any amount of gain that exceeds the exemption is taxed. This includes all assets of the expatriate even if none are connected in any way, to the United States.

Examples of discriminatory application include (but are not limited to) pensions. "Foreign" pensions are considered "ineligible" and are not treated favourably as are those considered to be "eligible" (i.e., pensions connected to the U.S).

Hidden inside the H.I.R.E. Act (Hiring Incentives to Restore Employment Act) is possibly the boldest attempt to enforce citizenship-based taxation; FATCA. The Foreign Account Tax Compliance Act.

This legislation was signed into law in 2010 and requires all foreign financial institutions in all 191 countries of the world, to report on their U.S Person account holders (at the expense of the institutions and of course, the shareholders and clients of these organizations). Many questions are raised as to the legitimacy of FATCA due to the fact that the Treasury Department is not empowered to negotiate treaties. That is the duty of the Senate.

While the claim is made that this is possible due to pre-existing treaties, the fact that Intergovernmental Agreements were created strongly suggests that FATCA is a tax treaty override.

The IGA's were necessary to bypass the privacy laws of these countries. Understandably, this has produced outrage, not only from Americans abroad but politicians, bankers, foreign citizens etc. In addition, other concerns include the lack of adequate data protection; the unfairness of joint accounts with "alien" spouses being reported at full value; the inevitability of incorrect identification without recourse to correction, etc. In the eyes of many Americans abroad, FATCA is "the straw that broke the camel's back."

The evidence is clear. Congress is financing general legislation on the backs of Americans abroad who:

1. Are a politically powerless group; and
2. Have no way of using the domestic services available to U.S. residents

This is clearly discriminatory and would not be necessary but for the fact of citizenship-based taxation being the "law of the land." Residence-based taxation is preferable as taxpayers pay for the services they are able to receive; every other country on earth sees this as "reasonable" and "fair."

https://www.jct.gov/publications.html?func=startdown&id=1619

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