VII. ENFORCEMENT OF PRESENT-LAW TREATMENT OF CITIZENSHIP RELINQUISHMENT AND RESIDENCY TERMINATION

A. Summary

The present-law alternative tax regime and related immigration provisions are not being adequately enforced in the manner intended by Congress. The IRS has taken steps to provide detailed guidance under Notice 97-19[322] and Notice 98-34[323] with respect to the application of the alternative tax regime. However, the GAO stated in their 2000 report that the "IRS does not yet have a systematic compliance effort aimed at enforcing income, estate, or gift tax laws related to tax-motivated expatriation."[324] Since that time, the IRS has ceased all compliance efforts directly related to the income, estate, and gift tax obligations of former citizens and former long-term residents under the alternative tax regime, other than to compile a database of such individuals and publish the names of those individuals in the *Federal Register* as required by section 6039G.[325] While compliance investigations of former citizens or former long-term residents may occur due to other IRS compliance activities (e.g., tax shelter investigations), the IRS does not monitor the individuals identified as former citizens or former long-term residents, either through the letter ruling process or from the Department of State's provision of CLN information, for the payment of U.S. income, estate, or gift taxes that may be owed during the 10-year period following an individual's citizenship relinquishment or residency termination.[326] In addition, the INS and the Department of State have not issued guidelines implementing the immigration provision applicable to former citizens with the result that the current provision has not been enforced since it was enacted in 1996.

This section describes enforcement problems with the alternative tax regime at the following stages of enforcement: (1) the identification of former citizens and former long-term residents who are potentially subject to the alternative tax regime; (2) the determination of whether an individual's relinquishment of citizenship or termination of residency is tax-motivated; and (3) the monitoring, assessment, and collection of U.S. income, estate, or gift tax over the 10-year period following an individual's citizenship relinquishment or residency termination. This section also describes enforcement problems with the immigration provision relating to the denial of re-entry into the United States for U.S. citizens who relinquish citizenship for tax reasons.

The Joint Committee staff requested the GAO to investigate the enforcement by the Department of Treasury, the IRS, the Department of State, and the INS of the alternative tax

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[322] 1997-1 C.B. 394. *See* A-166.

[323] 1998-2 C.B. 29. *See* A-193.

[324] *See* GAO Report at A-256.

[325] *See* A-141 (September 20, 2002, letter from the IRS).

[326] *See* A-148 (October 10, 2002, letter from the IRS).

regime and related immigration rules. The discussion below is based primarily on the GAO's findings in 2000, which are reproduced in the Appendix (at A-219), supplemented by Joint Committee staff discussions with IRS and INS personnel since that report. The GAO's findings were based on a review of tax and immigration laws, the procedures used to enforce such laws, interviews with appropriate government personnel, and an analysis of tax and immigration information and statistical data. The Joint Committee staff understands that the IRS initiated a project in December 1999 to assess compliance with the alternative tax regime by individuals who have voluntarily supplied information concerning their net worth and their income tax liability. According to the GAO, the project was scheduled to be completed by July 2000.[327] The IRS has indicated that some examinations of former citizens or former long-term residents were initiated as a result of this project.[328] However, the Joint Committee staff was unable to obtain information on the amount of tax collected under the expatriation rules through these efforts. In addition, the IRS indicated that this program was not being renewed.[329] The Joint Committee staff also understands that the INS is currently in the process of developing guidelines to implement the immigration provision applicable to former citizens.[330]

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[327] *Id.*

[328] *See* A-123 (August 14, 2002, letter from the IRS).

[329] *Id.* For a description of the IRS's analysis of its own efforts, see the letters reproduced at A-123 and A-63.

[330] *See* A-143 (October 8, 2002, letter from the INS).

B. Enforcement of the Alternative Tax Regime for Former Citizens and Former Long-Term Residents

1. Identification of former citizens and former long-term residents who are potentially subject to the alternative tax regime

An important step in enforcing the alternative tax regime is the identification of individuals who relinquish citizenship or terminate residency and who are potentially subject to the alternative tax regime. The IRS does not independently obtain information to determine whether former citizens or former long-term residents may be subject to the alternative tax regime. Rather, it relies upon the information that is supplied by the former citizen or former long-term resident and a ruling process (described below) to identify whether they are subject to the regime.[331] The success of this identification process depends in large part on cooperation by the former citizen or former long-term resident and coordination by the various agencies responsible for obtaining the information necessary for the IRS to make an initial determination as to whether an individual is subject to U.S. income, estate, or gift taxes under the alternative tax regime. In many cases, the necessary information is not being supplied by the former citizen or former long-term resident or requested by the appropriate agencies responsible for providing such information to the IRS.

Former citizens

The most common method to identify an individual who may be subject to the alternative tax regime is through a formal renunciation of U.S. citizenship. A U.S. citizen who formally renounces his or her citizenship must execute an Oath of Renunciation before a consular officer in a foreign country. In such cases, the consular officer submits a CLN to the Department of State in Washington, D.C. for approval.[332] The Department of State generally documents each such loss of citizenship when the individual acknowledges to a consular officer that the act was taken with the requisite intent to renounce citizenship. A copy of the approved CLN is issued directly to the former citizen.

The following numbers of U.S. citizens formally renounced citizenship during the past eleven years:

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[331] *See* GAO Report at A-256.

[332] As described in more detail in Part V. B., above, there are several other ways that a U.S. citizen can lose citizenship without the issuance of a CLN. Many of these other methods of citizenship relinquishment are not required to be reported to the appropriate U.S. authorities. Without a complete list of former citizens, the IRS's auditing efforts to identify individuals who may be subject to the alternative tax regime generally will be limited to only those persons who voluntarily provide expatriation data (i.e., a population of less than 100 percent of all former citizens).

Table 1.–Former Citizens Receiving CLNs[333]

Year	Number
1991	619
1992	556
1993	697
1994	858
1995-97	1,903[334]
1998	440
1999	433
2000	522
2001	334
Total	6,362[335]

The Secretary of State is required to collect the approved CLNs and forward a copy to the Treasury Secretary each month.

While the IRS maintains a database (the "CLN database") of individuals who have received a CLN, according to the GAO, it was only in 2000 that the IRS utilized that information to monitor and enforce compliance with the alternative tax regime.[336] According to the IRS, no

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[333] The data for 1991 through 1999 are from the GAO Report at A-256. The data for 2000 and 2001 are from the IRS. *See* Table 8 at A-321. The data differs from the information reported by the IRS at A-123 (August 14, 2002, letter from the IRS). The data reflects submissions of CLNs received by the IRS from the Department of State during the third quarter of 2002.

[334] According to the GAO, data for the years 1995 through 1997 are not distinguished by year because the IRS published the total number of former citizens for all three years in 1997 (the year the requirement was enacted). *Id.* In addition, the Joint Committee staff requested the Department of State to identify the number of approved CLNs for each of these three years. The Department of State advised the Joint Committee staff that they are unable to provide a yearly breakdown of CLNs approved for the years 1995, 1996, and 1997. According to the Department of State, their prior practice of collecting statistics on the annual numbers of CLNs was discontinued in 1994 because it did not serve their specific needs. *See* A-68 (May 18, 2000, letter from the Department of State).

[335] According to the IRS, 135 former U.S. citizens received CLNs for the period from January 1, 2002, through September 30, 2002.

[336] *See* GAO Report at A-256.

monitoring or compliance efforts are based on this database at present.[337] The CLN database is used only to coordinate reporting in the *Federal Register*.[338]

Furthermore, the usefulness of the CLN is dependent on the method of citizenship relinquishment. There is no requirement that a person obtain a CLN in order to relinquish citizenship. Also, the date that the Department of State issues a CLN is not necessarily the date of citizenship relinquishment. For example, a person could commit an expatriating act years before a CLN is issued. In such a circumstance, the 10-year period during which the former citizen may be subject to U.S. income, estate, or gift taxes under the alternative tax regime could expire before the CLN is issued and transmitted to the IRS. Generally, if there is no reason for the consular officer to suspect that the former citizen is being untruthful regarding the date of citizenship relinquishment, the date offered by the former citizen is accepted and recorded on the CLN. More importantly, a CLN by itself contains very little of the information that is needed to enforce the alternative tax regime. For example, it does not contain the individual's taxpayer identification number (i.e., his or her social security number).

Every individual who loses U.S. citizenship (formally or otherwise) is required to provide to the Department of State an information statement containing certain information.[339] The Department of State then forwards this information to the IRS, along with the names and other identifying information of persons who refuse to complete a statement. In March 1997, the IRS issued detailed guidance regarding the content of the required information statement in Notice 97-19. However, no official form was available from the IRS until January 1999 when IRS Form 8854 was released. In addition, the Department of State does not require that the information be provided on IRS Form 8854. The information supplied on Form 8854 and from the Department of State submissions is the basis of the IRS's CLN database. Based on anecdotal information, and information provided by the IRS, there is missing data related to various individuals in the database.[340] The IRS has drafted a first, second, and third notice and an associated Form 886E, "Explanation of Requested Items," but these notices and the related form are not yet in use.[341]

Information reporting relating to former citizens and former long-term residents is vital to any attempt to enforce the alternative tax regime. First, information reporting identifies

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[337] *See* A-141 (September 20, 2002, letter from the IRS).

[338] *Id.*

[339] Sec. 6039G(a). Although added to the Code in 1996, the provision became effective for individuals losing U.S. citizenship on or after February 5, 1995, and long term U.S. residents who terminate U.S. residency or begin foreign residency on or after February 5, 1995. However, under Notice 97-19, the information statements pursuant to section 6039G generally were not due earlier than June 8, 1997.

[340] *See* A-141 (September 20, 2002, letter from the IRS).

[341] *Id.*

individuals who may be subject to the alternative tax regime. Former citizens may voluntarily identify themselves as being tax-motivated on a tax information statement such as IRS Form 8854. According to the GAO, from 1995 through 1999, 182 out of the 1,158 former citizens who provided information statements identified themselves as meeting one or more of the monetary thresholds under section 877(a)(2).[342] For 2000 and 2001, 76 or fewer of the 686 former citizens who provided information statements identified themselves as meeting one or more of the monetary thresholds under section 877(a)(2).[343] Thus, through information reporting, as many as 258 individuals may have self-reported themselves to the IRS as potentially subject to the alternative tax regime. However, not all former citizens have filed IRS Form 8854 or provided another information statement. According to the GAO, of the 2,735 former citizens who received CLNs from 1995 through 1999 and whose names were published in the *Federal Register*, 1,158 provided a Form 8854 or other information statement.[344] That is, for the period 1995 - 1999, almost 58 percent provided none of the required information.[345] In contrast, for 2000 and 2001, of the 856 former citizens who received CLNs, 682 provided an information statement, or almost 80 percent of that population.[346] Receipt of IRS Form 8854 or other information statement remains a problem. The IRS reports that through September 30, 2002, the Department of State has forwarded 135 CLNs issued related to citizenship

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[342] *See* GAO Report at A-256.

[343] *See* A-123 (August 14, 2002, letter from the IRS). The IRS reported that for 2000 and 2001, 76 individuals who provided an IRS form 8854 or other information statement either identified themselves as meeting one or more of the monetary thresholds under section 877(a)(2) or included a social security number.

[344] *Id.* According to the GAO, the total of 2,735 former citizens receiving CLNs during 1995 through 1999 (which does not match the total for the same years listed in Table 1) reflects the fact that in March 2000 the IRS published a corrected listing of individuals receiving CLNs for the quarter ending June 1998.

[345] According to the IRS, because of the retroactive application of the 1996 alternative tax regime and the period required to publish guidance for former citizens and former long-term residents, the IRS initially did not receive a number of required information statements from former citizens and former long-term residents. However, after the issuance of Notice 97-19, approximately 95 percent of the CLN packages received contained the required information statement. *See* A-27 (May 5, 2000, letter from the IRS).

[346] *See* Table 8 at A-321. *See* A-123 (August 14, 2002, letter from the IRS). In that letter, the IRS reported that of the 792 former citizens who received CLNs, 686 provided an information statement, or almost 87 percent of that population. That data related to CLNs issued through June 30, 2002. The data reported in the text reflect a review of the prior submissions and CLNs issued in the third calendar quarter of 2002. In the third quarter of 2002, the Department of State issued an additional 64 CLNs relating to loss of nationality in either 2000 or 2001. A review of the prior data indicated that, in total, four fewer individuals submitted financial information than had been reported in the August 14, 2002, IRS letter.

relinquishments in 2002. Of these 135 individuals, only 41, or 30 percent, provided an IRS Form 8854 or other tax information statement.[347]

Provision of a social security number by the former citizen or former long-term resident is the second vital aspect of information reporting to the enforcement process. The IRS recordkeeping system for individuals in dependent on social security numbers. In the absence of a social security number, the IRS has a very limited ability to use the information and incorporate it into its existing systems. To search IRS databases by name, for example, is time consuming and often ineffectual. For the IRS to effectively monitor any returns filed by an individual subject to the alternative tax regime, the IRS requires an accurate social security number. The statute requires former citizens to include, among other things, their social security number on the information statement. However, many former citizens do not include a social security number as part of the required information. The GAO noted that in the period 1991 to 1999, of the 1,158 former citizens who provided tax information statements, only 955 included a social security number.[348] The experience has been similar in more recent years. The IRS has received 991 CLNs from the Department of State relating to the years 2000, 2001, and the first nine months of 2002. Of these individuals who relinquished citizenship, 723 have submitted IRS Form 8854 or other tax information statements and 623 have provided their social security number.[349] It is unclear whether the Department of State could compel an individual to furnish a social security number as part of the CLN process.[350] Some former citizens may not have a social security number. For example, dual citizens who were unaware of their U.S. citizenship may have never obtained a social security number. The Department of State has noted that many individuals who relinquish citizenship have a tenuous nexus to and have never resided in the United States. As a result, it is not uncommon for these individuals not to have a social security number.

The penalty for failure to report such information is equal to the greater of five percent of the first-year tax determined under section 877 or $1,000. However, according to the GAO and the IRS, no penalties have yet been imposed.[351] In January 2000, the IRS sent notices to persons

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[347] *Id.*

[348] *See* GAO Report at A-256.

[349] *See* Table 8 at A-321. The IRS reports that these data are not directly comparable to the figures reported by the GAO for years before 2001, because some individuals submit an IRS Form 8854 but no social security number and other individuals submit a social security number but no IRS Form 8854

[350] The Department of State does require individuals to surrender their U.S. passports as part of the CLN process. Section 6039E requires passport applicants (including renewal applications) to supply their social security numbers, effective for applications submitted after December 31, 1987. Because U.S. passports generally are not issued for more than 10 years, it should be possible to obtain missing social security numbers from passport applications.

[351] *See* GAO Report at A-256 and A-123 (August 14, 2002, letter from the IRS).

who failed to provide the required information statements. According to the IRS, approximately 125 letters were mailed to individuals who failed to provide required information statements; 74 individuals provided responses that brought them into full compliance with the section 6039G information reporting requirements.[352] The IRS indicated that compliance efforts were hampered with regard to individuals who did not respond due to lack of social security numbers or general inability to identify the individuals.[353] The Joint Committee staff understands that the IRS has not attempted systematically to collect missing information since the reorganization of the IRS in the fall of 2000, although, as noted above, the IRS has drafted a series of proposed notices and a form that would be sent to former citizens or former long-term residents for whom such data are incomplete. Some argue that the present-law penalty for failure to provide the required information may not be a sufficient disincentive to encourage information reporting.

While the Department of State has forwarded to the IRS whatever information it receives, the Department of State does not require its consular officers to obtain the information in a uniform fashion. The Department of State's November 1996 guidance to its consular posts calls for them to obtain tax information statements as required by section 6039G; however, each consular office has discretion in what forms to use. As a result, prior to the introduction of Form 8854 in 1999, the quality and usefulness of the information the Department of State received (and provided to the IRS) varied widely. There may still be gaps in the quality and usefulness of this information because the Department of State does not require each consular office to use Form 8854 (although many do).

Former long-term residents

Aside from the ruling process described below, no similar data to Table 1 (relating to the number of former citizens) exists for identifying former long-term residents who may be subject to the alternative regime.

Section 6039G(c)(3) requires the INS to provide the IRS with the name of each lawful permanent resident of the United States whose status has been revoked or has been administratively or judicially determined to have been abandoned. The law also requires each long-term resident (defined as a person who has been a lawful permanent resident for at least eight of the last 15 years) who ceases to be taxed as a resident to file an information statement similar to that filed by former citizens (i.e., Form 8854). That form is required to be filed directly by the former long-term resident with the IRS.

The CLN database maintained by the IRS contains former citizens only. The IRS does not track whether a former long-term resident has filed the required information statement, and does not have specific procedures in place to monitor compliance efforts with respect to former

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[352] *See* A-123 (August 14, 2002 letter from the IRS).

[353] *Id.*

long-term residents under the alternative tax regime.[354] The IRS does not use the information provided by the INS to track former long-term residents.[355]

The INS does provide information to the IRS identifying whether a permanent resident's status has been revoked. However, the information supplied by the INS has not proven to be helpful in identifying former long-term residents who may be subject to the alternative tax regime. The information does not distinguish former long-term residents (as defined for purposes of the alternative tax regime) from other green-card holders.[356] The INS does not keep records regarding the movement of these individuals into or out of the United States.[357] Thus, it is unable to track whether a former permanent resident qualified as a "long-term resident" for purposes of section 877. Unless a former permanent resident tries to reenter the United States after a prolonged absence (e.g., more than one year) without the proper documentation, or voluntarily turns in his or her green card, the INS has no method for identifying these individuals.

In addition, the information from the INS generally does not include the individual's tax identification number (i.e., social security number). The INS does not organize its records by social security number because such a number is not necessary to carry out its functions. While persons are assigned a unique "alien registration number," it does not correspond to a social security number. Thus, the IRS has difficulty integrating that information into its social security number-based system.

2. Determination of whether an individual's relinquishment of citizenship or termination of residency is tax-motivated

Another important step in enforcing the alternative tax regime is to determine whether an individual's relinquishment of citizenship or termination of residency is tax-motivated. This determination has been based largely on the monetary thresholds under section 877(a)(2) (which

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[354] *See* GAO Report at A-256. The IRS could attempt to match the names of former long-term residents from the INS database with taxpayer identification numbers in the IRS database. The IRS notes, however, that this matching process involves a labor-intensive manual search.

[355] *See* GAO Report at A-256. The IRS contends that it has attempted to use the data, but because of the large volume of records and the lack of social security numbers use of the data is time consuming and resource intensive. *See* A-27 (May 5, 2000, letter from IRS) and A-123 (August 14, 2002 letter from IRS).

[356] *See* GAO Report at A-256.

[357] According to the INS, it does track the movements of nonimmigrants on its Nonimmigrant Information System ("NIIS"). NIIS tracks admission and departure dates of nonimmigrants, as well as each nonimmigrant's stated destination in the United States. The arrival and departure records of permanent residents are not tracked by any INS system.

deem a tax avoidance purpose for relinquishing citizenship or terminating residency), and an IRS ruling process for certain individuals who wish to avoid such deemed treatment.

Several enforcement problems exist with respect to identifying former citizens and former long-term residents who meet the monetary thresholds. As described above, the IRS generally has not received adequate information (including social security numbers) in order to determine whether an individual has met one or more of the statutory criteria deeming a tax avoidance purpose. The GAO determined that of the 182 former citizens during the period 1995 through 1999 who identified themselves as meeting one or more of these statutory criteria, only 23 submitted ruling requests.[358] The remaining 159 individuals for that period who did not submit a ruling request presumably are subject to the alternative tax regime. However, according to the GAO, the IRS generally has not sought to determine whether any of these individuals who are considered to be tax-motivated owe tax under these special rules. For 2000 and 2001, the IRS reports that, of the 76 former citizens who identified themselves as either meeting one or more of the monetary thresholds or who included a social security number, 44 submitted ruling requests.[359] Again, the remaining 32 individuals presumably are subject to the alternative tax regime, but the IRS has not sought to enforce these rules.

Similar enforcement problems have arisen in the ruling context. Under the ruling process, a former citizen or former long-term resident who falls within certain categories may avoid the deemed treatment under the monetary thresholds by submitting a ruling request within one year of citizenship relinquishment or residency termination. The table below identifies the number of private letter rulings that have been issued to former citizens and former long-term residents and publicly released during the period from January 1, 1997, through July 1, 2002 (excluding extension requests).

Table 2.–Summary of Private Letter Rulings Issued to Former Citizens and Former Long-Term Residents during the Period from January 1, 1997 through July 1, 2002[1]

Year Issued	Former Citizens	Former Long-Term Residents	Total
1997	11	4	15
1998	0	3	3
1999	42	54	96
2000	22	40	62
2001	19	55	74
2002	6	14	20
Total	100	170	270

[1] Under Notice 97-19, private letter rulings may be submitted before or within one year after citizenship relinquishment or residency termination. Furthermore, those individuals may submit a ruling request up to one year after their citizenship relinquishment or residency termination.

[358] *See* GAO Report at A-256.

[359] *See* A-123 (August 14, 2002 letter from IRS).

During the period from January 1, 1997 through July 1, 2002, 270 former citizens and former long-term residents were issued private letter rulings in order to avoid being treated as having a tax avoidance purpose under the alternative tax regime. Of the 270 private letter rulings issued during this period, 100 were issued to former citizens and 170 were issued to former long-term residents. Under the present procedures, the receipt of a ruling request generally is the only practical way that the IRS becomes aware that a long-term resident terminated residency (even though such individuals are required to submit an information statement).

The private letter rulings that have been issued since the 1996 legislative changes to the alternative tax regime vary depending upon whether they were issued pursuant to Notice 97-19 or Notice 98-34. Under Notice 97-19, a former citizen or former long-term resident who met the monetary thresholds of tax avoidance and who was eligible to submit a ruling request was subject to the alternative tax regime unless he or she obtained a favorable ruling.[360] This ruling practice placed considerable pressure on the issuance of a taxpayer-favorable ruling.

The IRS's ruling practice was modified in Notice 98-34 due to the IRS's stated difficulties in making determinations regarding tax avoidance motives because of the factual and subjective nature of the inquiry. Under this modified ruling procedure, the IRS is not limited to ruling whether or not an individual's citizenship relinquishment or residency termination was tax-motivated. Rather, the IRS may merely rule that the former citizen or former long-term resident submitted a complete ruling request in good faith (without ruling on the substantive issue of whether one of the principal purposes of the citizenship relinquishment or residency termination was tax avoidance). If the former citizen or former long-term resident receives this third type of ruling (i.e., a "fully submit" ruling), the former citizen or former long-term resident is not treated as having a tax avoidance purpose as a result of meeting the monetary thresholds. However, the IRS reserves the right to make a subsequent determination (based on the facts and circumstances) that the individual's citizenship relinquishment or residency termination was tax-motivated.

Table 3, below, identifies the number of private letter rulings that have been publicly issued to former citizens and former long-term residents during the period from January 1, 1997, through July 1, 2002 (excluding extension requests), under Notice 97-19 and Notice 98-34, respectively, broken down by the type of ruling issued:

[360] Under Notice 97-19, the IRS could (if it chose to issue a ruling) provide either a favorable or unfavorable ruling as to whether an individual relinquished citizenship or terminated residency for tax avoidance purposes.

Table 3.–Private Letter Rulings Issued to Former Citizens and Former Long-Term Residents Under Notices 97-19 and Notice 98-34 during the Period from January 1, 1997, through July 1, 2002

Ruling Issued	Notice 97-19	Notice 98-34	Total
Favorable:			
Former citizens	11	17	28
Former long-term residents	4	100	104
	15	117	132
Unfavorable:			
Former citizens	0	11	11
Former long-term residents	0	0	0
	0	11	11
Fully Submit:			
Former citizens	Not applicable	65	65
Former long-term residents	Not applicable	62	62
		127	127
Total	15	255	270

Only 15 rulings were issued under Notice 97-19. All of these rulings were favorable for the former citizen or former long-term resident (i.e., that the individual's citizenship relinquishment or residency termination was determined not to be tax-motivated). In addition, 255 rulings were issued through July 1, 2002, under Notice 98-34. Of the 255 rulings, 127 rulings were fully submit rulings with no opinion regarding whether the individual's citizenship relinquishment or residency termination was tax-motivated, and 11 were unfavorable rulings concluding that an individual relinquished citizenship with a principal purpose of tax avoidance. The remaining 117 rulings issued during this period under Notice 98-34 were favorable rulings concluding that the individual lacked a principal purpose of tax avoidance for citizenship relinquishment or residency termination. Summaries of the 270 private letter rulings issued during the period from January 1, 1997, through July 1, 2002, are contained in the Appendix at A-218.

The IRS has no special procedures in place to further investigate former citizens or former long-term residents who were issued an unfavorable ruling (i.e., concluding the existence of a principal purpose of tax avoidance).[361] Thus, even though a former citizen or former long-term resident was determined to have a principal purpose of tax avoidance and was subject to the alternative tax regime for 10 years following the citizenship relinquishment or residency termination, the IRS generally has not sought to determine whether these individuals owe any tax

[361] *See* GAO Report at A-256.

under these special rules.[362] In fact, aside from the 125 letters mailed in January 2000 requesting additional information, the IRS has made no special efforts to monitor former citizens' or former long-term residents' compliance with the rules. The IRS has never followed up on former citizens or former long-term residents who withdrew a ruling request after being informed that the IRS may rule unfavorably. In addition, the IRS has no special procedures in place to further investigate individuals who have received a determination only that he or she submitted a complete ruling request in good faith in accordance with Notice 98-34.[363]

For those former citizens or former long-term residents who have not submitted a ruling request or self-reported meeting one or more of the monetary thresholds, the IRS does not have special procedures to determine whether the individual is subject to the alternative tax regime.[364] These individuals could include those who met the monetary thresholds but were not eligible (or have not attempted) to submit a ruling request, as well as individuals who did not meet the monetary thresholds but who nevertheless could be determined to be tax motivated after a review of their particular facts and circumstances. This lack of enforcement may be attributable (in part) to the lack of sufficient information the IRS has received to date in order to make these determinations.

3. IRS monitoring, assessment, and collection of taxes during the 10-year period after citizenship relinquishment or residency termination

For former citizens or former long-term residents who are determined to be tax-motivated, the next step in enforcing the alternative tax regime is to monitor the former citizens or former long-term residents during the 10-year period after citizenship relinquishment or residency termination to determine the amount of U.S. income, estate, or gift tax that should be assessed and collected under the rules. Former citizens and former long-term residents who are subject to the alternative tax regime generally are required to file a Form 1040NR for each of the 10 years, beginning with the year following citizenship relinquishment or residency termination, if the former citizen or former long-term resident is liable for U.S. tax.[365] The former citizen or former long-term resident is required to attach to the Form 1040NR a statement setting forth (generally by category) all items of U.S.- and foreign-source gross income. In addition, the estates of former citizens and former long-term residents who are subject to the alternative tax regime and who die within the 10-year period after citizenship relinquishment or residency

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[362] In the case of taxpayer favorable rulings, no further action is required because the IRS had already made a determination concluding a lack of a principal tax avoidance purpose.

[363] *See* GAO Report at A-256. At the time of the GAO Report in 2000, since no fully submit rulings were issued prior to November 1998, the IRS arguably did not have sufficient time in which to begin audits of taxpayers who have received such rulings. However, the Joint Committee staff has not found that the IRS subsequently conducted any examinations of such individuals.

[364] *Id.*

[365] Treas. Reg. sec. 1.6012-1(b)(2)(ii)(b).

termination generally are required to file a Form 706-NA if they died owning property subject to the U.S. estate tax. Similarly, such former citizens and former long-term residents are required to file a Form 709 if they made a taxable gift of U.S.-situated property.

The IRS generally has not assessed liability for U.S. income, estate, or gift taxes under the alternative tax regime during the 10-year period after citizenship relinquishment or residency termination (although some taxpayers have self-assessed liability for tax under these rules). According to the GAO and subsequent inquiry by the Joint Committee staff, the IRS has no special procedures for monitoring former citizens' or former long-term residents' tax compliance during the 10-year period in which an individual is subject to the alternative tax regime under section 877.[366] The IRS is not able to quantify the number of tax returns of former citizens and former long-term residents that are filed each year, nor the related amount of tax reported on such returns.[367] In addition, the IRS has no special procedures in place to ensure that former citizens and former long-term residents are not converting their U.S. assets to foreign assets, and the IRS has never invoked any of the anti-abuse rules under section 877(d) with respect to a former citizen or former long-term resident.[368]

Prior to the reorganization of the IRS in the fall of 2000, the IRS had established guidelines under which a "planning and special programs unit" would conduct filing and payment monitoring and a compliance review of individuals entered into the CLN database. This administrative unit was to review the materials received along with the former citizen's CLN and establish a database. If the review revealed non-compliance prior to citizenship relinquishment or residency termination, the unit was to refer the case to the appropriate compliance personnel. Subsequent to citizenship relinquishment or residency termination, this planning and special programs unit was to monitor for filing compliance during the 10-year period and if required initiate audits or other compliance actions.[369] The JCT staff has not found that any monitoring or compliance actions were initiated under these guidelines.

In the fall of 2000, as part of the reorganization of the IRS, responsibility for compliance with section 877 became a function of the Small Business/Self-Employed division of the IRS.

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[366] *See* GAO Report at A-256 and A-141 (September 20, 2002, letter from the IRS).

[367] *Id.* Although IRS Forms 1040NR (U.S. Nonresident Alien Income Tax Return) and 706-NA (United States Estate and Generation Skipping Transfer Tax Return) contain questions regarding whether a taxpayer has relinquished U.S. citizenship or U.S. residency within the prior 10 years, the IRS does not appear to have used this information (to the extent supplied) to any degree.

[368] *See* GAO Report at A-256. Section 877, as revised in 1996, provides for several anti-abuse rules intended to prevent former citizens and former long-term residents from converting U.S.-source income producing property into foreign-source income producing property. Such a conversion would otherwise mean that such foreign-source income would not be subject to the alternative tax regime.

[369] *See* A-141 (September 20, 2002, letter from the IRS).

At present, as part of the operations of the Small Business/Self-Employed division, the Philadelphia Service Center of the IRS receives the CLNs, IRS Forms 8854 and other information from the Department of State and maintains the CLN database. The database currently is not used as the basis for any review of the former citizen's compliance in the five years prior to citizenship relinquishment or residency termination. The CLN database currently is not used as the basis of any monitoring of required filing by former citizens during the 10-year period following citizenship relinquishment or residency termination. Consequently, the database is not the basis of any compliance initiative related to post-expatriation tax liabilities. The only purpose the database currently serves is to provide the information necessary to fulfill the requirement that the IRS publish quarterly the names of expatriating individuals in the *Federal Register*.[370] Based on discussions with IRS officials, the Joint Committee staff understands that attempts at monitoring or compliance based upon the CLN database ceased in the fall of 2000.

Regarding the potential estate and gift tax liabilities of former citizens and former long-term residents, according to the GAO, the IRS has no procedures in place for determining whether former citizens or former long-term residents have died or owe U.S. estate taxes.[371] Thus, the IRS has been unable to determine the number of estates that are subject to the foreign stock look-through rule[372] that applies to estates of former citizens and former long-term residents who are subject to the alternative tax regime. The IRS does not have a separate process for auditing gift tax returns of former citizens and former long-term residents.[373] Rather, gift tax returns are reviewed as part of estate tax audits. Consequently, the IRS has been unable to determine the number of former citizens and former long-term residents required to pay gift tax on the transfer of U.S.-situated intangibles.[374]

Some of the enforcement problems with respect to the monitoring, assessment, and collection of U.S. estate and gift taxes of former citizens and former long-term residents may be attributable to broader enforcement problems in the area of U.S. estate and gift taxation of nonresident noncitizens. The IRS appears to devote little in the way of specific resources with respect to the enforcement of U.S. estate and gift taxes owed by such nonresidents -- whether former citizens, former long-term residents, or otherwise. According to the GAO, the IRS does not have any specific procedures in place to identify nonresident noncitizens who may have a

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[370] *See* A-141 (September 20, 2002, letter from the IRS).

[371] *See* GAO Report at A-256. IRS Form 706-NA contains a question that requires a noncitizen and nonresident decedent to identify whether he or she relinquished citizenship or terminated residency within 10 years of death. IRS officials indicated that any estate tax return which indicates that the decedent relinquished citizenship or terminated residency within 10 years of death would be selected for audit.

[372] Sec. 2107(b)

[373] *See* GAO Report at A-256.

[374] Sec. 2501(a)(3).

potential U.S. estate or gift tax liability.[375] Moreover, the IRS generally does not receive third-party information when nonresident noncitizens die having owned U.S.-situated property and, thus, having a potential U.S. estate tax liability.

To enforce the tax liability of a nonresident noncitizen (including individuals subject to the alternative tax regime), the IRS must do so through an estate's representative, trustees, or other individuals who would have personal liability for any tax. To the extent property is physically located within the United States, the IRS can levy upon such assets, as such action is one *in rem* (i.e., an action over the property). However, placing assets into foreign trusts with a foreign fiduciary, for example, may impair the IRS's ability to levy against such property, particularly if such assets are located outside the United States, and it may not be possible for the IRS to obtain jurisdiction over a foreign fiduciary. If the IRS seeks to enforce such tax, it may require obtaining a judgment in the United States as to the tax liability and seeking to enforce such judgment abroad. In addition, the IRS may seek to file an original action in a foreign court. However, sovereignty issues may arise in seeking the assistance of a foreign tribunal in enforcing U.S. tax law. Treaties also may provide some ability for the IRS to enforce U.S. tax law; however, this also requires assistance by foreign governments and, potentially, foreign tribunals with issues over which these entities otherwise would have no jurisdiction.

Some might argue that enforcement of the alternative tax regime could be improved through coordinated enforcement with other countries in which the former citizen or former long-term resident resides, particularly countries with which the United States has a treaty relationship. Most United States income tax treaties provide for the exchange of tax information. These agreements generally allow for the exchange of information that is relevant for carrying out the treaty provisions or the domestic tax laws of a treaty country. Such information may relate to the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the treaty. However, the IRS has recently stated that "the IRS has not yet utilized exchange of information procedures under a treaty to solicit information regarding a citizen who we believe has relinquished citizenship to avoid tax pursuant to the 1996 expatriate tax law."[376] In addition, income tax treaties provide for at least some measure of tax collection assistance. However, such collection assistance is limited only to information to ensure that the exemptions or reduced rates of tax under the respective treaties do not inure to the benefit of persons not so entitled.[377] However, the value of

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[375] *See* GAO Report at A-256.

[376] *See* A-63 (May 16, 2000, letter from the IRS). *See* A-123 (August 14, 2002, letter from the IRS).

[377] *See* GAO Report at A-256. However, the United States income tax treaties with Denmark, France, Greece, the Netherlands, and Sweden generally provide for collection assistance with respect to all income taxes. This broader collection assistance is not available with respect to U.S. tax liabilities that relate to a period of time during which the taxpayer was a citizen of such foreign country. For example, assume that a U.S. citizen relinquished U.S. citizenship and became a Danish citizen. The former citizen may have had U.S. Federal income tax liabilities relating to the periods during which he or she was a U.S. citizen. The former citizen also could be subject to the alternative tax regime for a period of 10 years after

coordinated enforcement is very limited. Individuals who renounce citizenship or terminate residency for tax reasons are likely to move to countries that have no tax treaty relationship with the United States, which may prevent the enforcement of extraterritorial judgments.

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citizenship relinquishment (i.e., after becoming a Danish citizen). Under the U.S.-Denmark income tax treaty, the United States could request that Denmark assist in collecting U.S. taxes from the former citizen; however, such assistance would be limited to only the tax liabilities that accrued prior to the time when he or she became a Danish citizen (i.e., while he or she was a U.S. citizen). Thus, any section 877 tax liabilities generally would not be within the scope of the collection assistance provision.

C. Enforcement of the Immigration Provisions

Under the immigration provisions, a former U.S. citizen who "officially renounces" citizenship does not qualify for admission to the United States if the Attorney General determines that the renunciation was for tax avoidance purposes.[378] According to the GAO, no procedures are in place to implement this provision.[379] Thus, since its enactment in 1996, no individual has been deemed inadmissible under this provision.[380]

The immigration provision presents several enforcement difficulties. As a threshold matter, the INS and the Department of State do not agree on when an individual has "officially" renounced U.S. citizenship.

The immigration provision does not define what it means to "officially" renounce United States citizenship. Another statutory provision lists the acts by which an individual may lose or relinquish their U.S. citizenship.[381] The phrase "officially renounces United States citizenship" is not used in that section. Instead, certain acts are described using the words "formal" or "formally." These acts are: (1) formally declaring allegiance to another country, (2) making a formal renunciation of nationality before a U.S. diplomatic or consular officer in a foreign country, and (3) making a formal renunciation of nationality in the United States during a time of war.[382] Other acts, such as naturalizing in a foreign country, are not described in the statute as "formal." By using the phrase "officially renounces United States citizenship," the immigration provision creates an ambiguity as to acts that are considered "official." The immigration provision could be interpreted to apply to individuals committing any of a number of possible types of acts, or its application could be limited to only those individuals committing acts described as "formal."

According to the Department of State the phrase "officially renounces United States citizenship" means only a "formal" renunciation of U.S. citizenship before a U.S. consular officer abroad. On the other hand, according to the INS, any of the acts qualifies as "official" if performed voluntarily and with the intent to relinquish citizenship. If the act is confirmed by the issuance of a CLN, the INS maintains that the individual has "officially renounced" U.S. citizenship.

Committing any one of the acts does not automatically result in the loss of citizenship. The act must be voluntarily performed for loss of citizenship to occur. This is a subjective test and intent is not presumed. Intent may be difficult to prove absent some accompanying act

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[378] 8 U.S.C. sec. 1182(a)(10)(E), which became effective September 30, 1996.

[379] *See* GAO Report at A-256.

[380] *See* A-143 (October 8, 2002, letter from the INS).

[381] 8 U.S.C. sec. 1481.

[382] 8 U.S.C. sec. 1481(a)(2), (a)(5), and (a)(6).

wholly inconsistent with U.S. citizenship. In September 1990, the Department of State issued a policy statement designated as "Advice About Possible Loss of U.S. Citizenship and Dual Nationality." The policy statement provides that for certain acts, the Department of State operates on the premise that the individual intended to retain U.S. citizenship:

> As already noted, the actions listed above can cause loss of U.S. citizenship only if performed voluntarily and with the intention of relinquishing U.S. citizenship. The Department has a uniform administrative standard of evidence based on the premise that U.S. citizens intend to retain United States citizenship when they obtain naturalization in a foreign state, subscribe to routine declarations of allegiance to a foreign state, or accept non-policy level employment with a foreign government.[383]

Thus, an individual could commit an act by becoming naturalized in a foreign country but still retain their U.S. citizenship if they lacked the requisite intent. The difficulty in determining whether an individual had the requisite intent, hinders the determination that citizenship has been lost and in turn, that such individual is subject to the immigration provision.

No database to track individuals who lose citizenship for tax reasons can be developed until the responsible agencies agree who has lost citizenship within the meaning of the provision and therefore, should be included in the database. Without agreement on the individuals to whom the law applies, no action can be taken.

The difficulty in determining when a U.S. citizen has committed an act with the requisite intent to relinquish citizenship also has tax implications. When performed with the requisite intent, the act of relinquishing citizenship terminates the obligation to continue to pay U.S. taxes on worldwide income. No Federal law requires an individual to request a CLN or notify the Department of State of the intent to relinquish citizenship within a specified amount of time after the act has been committed. If an individual does notify a consular officer at some later date, the loss of citizenship is retroactive to the date of the relinquishment of citizenship. This retroactivity permits individuals who relinquish citizenship for tax reasons to assess after the fact whether it would be advantageous to claim that the relinquishment was effective at an earlier date. It is unlikely that the Federal Government would possess evidence to contradict a former citizen's statement of subjective intent.

Another enforcement problem exists with respect to the requirement that the Attorney General determine whether the former U.S. citizen renounced his or her citizenship for tax avoidance purposes. The law does not set out any criteria for determining tax avoidance. While the Attorney General could seek guidance from the IRS on how to apply the law generally, he cannot have access to a specific taxpayer's return information without the consent of the taxpayer. Thus, the Attorney General cannot access a taxpayer's returns for purposes of determining a tax avoidance motive.

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[383] Department of State, *Advice About Possible Loss of U.S. Citizenship and Dual Nationality*, 67 Interpreter Releases 1092 (October 1, 1990).

The law does not require the Attorney General to consult with or follow the opinion of the IRS regarding a former citizen's tax avoidance motive. Conceivably, the Attorney General, through the Department of Justice's Tax Division, could make a determination independent of the IRS, but it would require a review of detailed submissions from the individual seeking admission. Ordinarily, applications for tourist visas are granted within 24 hours. This process would be lengthened substantially if the Attorney General were to make an independent determination. In addition, for individuals for whom a visa is not required, a determination would have to be made at the time the individual attempts to enter the United States. Such a time-consuming process is ill-suited to having the INS make a determination at the port of entry. Even if admitted under deferred inspection, district agents of the INS would have to rely on individuals with tax expertise to make the determination. This also assumes that the individual being inspected would have available the needed records to provide to the INS for examination.

The IRS is required to publish quarterly in the *Federal Register* the names of each individual losing United States citizenship within the meaning of section 877(a).[384] The IRS publishes the list quarterly; however, the list is not limited to those individuals who have relinquished citizenship for tax avoidance purposes. Thus, the Department of State and the INS cannot rely on the list as a source of individuals to be deemed inadmissible to the United States. As a result, the list does not aid in the enforcement of the immigration provision.

The differing interpretations of the statute and the inability to access taxpayer records from the IRS has led to a lack of enforcement for the entire period that the law has been in effect. While the INS has been working with the Departments of State and Justice and the IRS to develop guidelines for administering the immigration provisions, no guidelines or procedures have been actually established.[385]

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[384] Sec. 6039G(e).

[385] *See* A-143 (October 8, 2002, letter from the INS).