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).

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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).