

A 1996 law attempted to stop tax deserters at the border. It ain't working.

Home free

BY BRIGID McMENAMIN

OUTRAGED THAT THOUSANDS of rich Americans like Campbell Soup heir John Dorrance III and former Star-Kist Foods Chairman Joseph Bogdanovich were renouncing citizenships for tax havens overseas, in 1996 Congress tried to stop the flow.

First it imposed a ten-year tax on expatriated Americans; then it forbade tax-motivated expats to ever visit the U.S. again. Has it worked?

Not really. Since FORBES first wrote about the expatriate phenomenon (Feb. 28, 1994), it hasn't lost its popularity. A total of 4,415 people have turned in their citizenship or green cards over the past five years, more than half of them after the feds cracked down. In the first quarter of 1999, 128 took the step, including J. Paul Getty's grandson Tara Getty, 31; Jacob Stolt-Nielsen, 36, son of shipping magnate Jacob Stolt-Nielsen Jr.; and Joseph J. Bogdanovich Jr., son of the Star-Kist mogul. Many other expats deliberately lose citizenship without formally renouncing, believing that way they evade the ban on visiting.

On the face of it, the 1996 law is quite harsh. It says that if escaping taxes was among your principal motives, the feds can collect estate taxes and income taxes on U.S. earnings and investment income for the next ten years. They needn't prove you were tax-motivated: If your net worth tops \$500,000 or your income tax bill tops \$100,000, the law presumes your motives are impure.

The U.S. taxes citizens on all

income worldwide. Same goes for green-card holders. If you give up either to escape taxes, the feds can go on taxing your U.S. source income for ten years.

But there are plenty of loopholes that have let a lot of people slip through the net. Examples: Any American who becomes a citizen of a land where he or a parent was born can get off the hook. Ditto for

Similarly, Norwegian shipping heir Jacob Stolt-Nielsen, a longtime green-card holder, resumed residence back home—after years of college and work in the U.S. He thus won't be subject to U.S. income taxes on any investment he may have here or in U.S.-based companies.

An increasingly popular option is to seek a private IRS ruling if you think you qualify for one of the exceptions. Until last year only a favorable ruling was sufficient to rebut the presumption of tax motivation. But last spring the IRS decided that simply *submitting* a request for such a ruling is enough.

Take the case of the 13-year exile who got his ruling on Feb. 8. Though he didn't qualify as a longtime exile because he had spent more than 30 days in the U.S. in two of the past ten years, the IRS determined that simply by submitting a request in good faith, he'd successfully rebutted the presumption.

Yes, the IRS can technically still go after this man. But he and many others who have sought rulings are effectively home free. Why? It's much easier for the IRS to go after someone who hasn't rebutted the presumption.

Lawyers like Sanford Goldberg, a partner at New York's

anyone holding dual citizenship at birth. Or a long-term exile who hasn't spent 30 days in the U.S. in any one of the past ten years.

Tara Getty, who this winter renounced U.S. citizenship after securing an Irish passport, qualifies. Getty attended college in England and works on his family's game reserve in South Africa. For years, he has seldom visited the U.S. Getty insists he'll go on paying income tax for ten years. But the IRS will never touch his \$400 million inheritance. In June he flew into the U.S. for a wedding without any trouble at Customs.

Roberts & Holland, and Edmund Granski of New York's Cadwalader Wickersham & Taft have made a lucrative practice of seeking such rulings, at about \$20,000 per case. In the past three years, attorneys have managed to get 31 favorable rulings out of the IRS. So far the IRS hasn't nailed—or even audited—anyone.

What about the threat of being barred from future visits? Since the Immigration & Naturalization Service so far has not barred anyone, the threat doesn't seem all that significant. Says North Hollywood tax and estate lawyer F. Bentley Mooney: "The tiger has no teeth." ■

