Why Denise Rich Gave Up U.S. Citizenship

Another wealthy American has given up U.S. citizenship and the taxes that go with it: Denise Rich, the Grammy-award-nominated songwriter and ex-wife of commodities trader Marc Rich. Rich’s maiden name, Denise Eisenberg, appeared in the Federal Register on April 30 on a quarterly list giving the names of those who turned in their passports or green cards. The next list is scheduled to be released on July 30.

Rich, 68 years old, wrote “Frankie,” a mid-eighties hit for Sister Sledge. She also has written songs recorded by Aretha Franklin and Mary J. Blige (“Don’t Waste Your Time”), Natalie Cole, Chaka Khan, Celine Dion, Diana Ross and Jessica Simpson.

In 2001 President Bill Clinton granted Mr. Rich, who at the time was a fugitive wanted for U.S. tax fraud and issues involving illicit oil trading with Iran, a pardon on his last day in office. Critics charged that the pardon was in exchange for Denise Rich’s substantial donations to President and Ms. Clinton’s campaigns and to the Democratic party.

A spokesperson for Denise Rich said that she expatriated in order to be closer to her longtime life partner, Peter Cervinka, as well as her friends and family. She will be an Austrian citizen. Her deceased father, Emil Eisenberg, was a refugee from Hitler’s Germany who became a wealthy shoe manufacturer in Worcester, Mass., where Rich grew up.

Rich is not alone in giving up her U.S. citizenship: In 2011, nearly 1,800 people renounced their U.S. citizenship or residency, a sixfold increase from 2008. In May, a furor erupted after it was revealed that Facebook co-founder Eduardo Saverin had renounced his citizenship ahead of Facebook’s public offering, saving himself millions in taxes.

Experts say the increase in expatriations comes in part because of the Internal Revenue Service’s crackdown on undeclared and untaxed foreign holdings of U.S. taxpayers. Unlike many countries, the U.S. taxes citizens and residents on their worldwide income, but the rules were loosely enforced for many years. That changed after the terrorist attacks on Sept. 11, 2001, and, separately, evidence that giant Swiss bank UBS and other offshore providers were encouraging U.S. taxpayers to hide assets abroad.

Bryan Skarlatos, an attorney at Kostelanetz & Fink in New York, says that if Rich has extensive foreign holdings, “she just may not want to pay U.S. tax on that income.”

A spokesperson refused to comment on Rich’s holdings.
The exodus from the U.S. may also be intensifying because of the prospect of higher tax rates next year. Even if Congress extends current tax rates for a year or two, a new 3.8% tax on investment income for most couples with adjusted gross income above $250,000 ($200,000 for singles) will take effect in order to help pay for the heath-care overhaul.

In order to leave in good standing, Rich will owe exit taxes. U.S. citizens and residents who expatriate are treated as though they sold all their property the day before they renounce, even if they will continue to own it and pay property or other federal, state or local taxes. Capital gains are taxed at the current top rate of 15%, and some assets (such as individual retirement accounts) are subject to tax at ordinary income rates as high as 35%.

Expatriates-to-be also have to show proof of tax compliance for five years, and may have trouble re-entering the U.S. without a visa. (For more details on the consequences of expatriation, click here.)

Earlier this year, Rich was involved in a legal action over a Cook Islands trust she established in 1992. The Cook Islands is a country comprising 15 South Pacific Islands that is known for its strong asset-protection laws, according to attorney Jim Duggan of Duggan Bertsch in Chicago, who advises high-net-worth clients. U.S. taxpayers who want to protect $1 million or more from creditors often turn to the Cook Islands or the island of Nevis in the Caribbean, among others, he says. Such moves are legal, says Duggan, as long as the taxpayers aren’t avoiding current creditors and pay all U.S. taxes they owe.

In Rich’s case, she was sued by the “protector” of her trust—who, along with the trustee, looks out for the interests of beneficiaries—because he believed she had improperly “transferred, moved, or secreted” trust assets in a way that was presumably in violation of the trust agreement. The complaint did not reveal the amount of the trust assets, but said they were "in danger of being secreted or dissipated."

The case was dismissed without prejudice in mid-April by a U.S. District Court judge in South Florida—after a settlement, according to Rich’s spokesperson.