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July 16, 2012

The Honorable Charles Boustany
Chairman, Subcommittee on Oversight
The Honorable Sam Johnson
Chairman, Subcommittee on Social Security
Committee on Ways and Means
U. S. House of Representatives
Washington, D.C. 20515

Dear Chairman Boustany and Chairman Johnson:

I am writing in response to your letter dated June 15, 2012, which requested that I answer two questions for the record submitted in connection with the subcommittees' May 8, 2012, hearing on identity theft and tax fraud. The questions, and my responses, follow.

Question 1

How can the Internal Revenue Service, the U.S. Treasury Inspector General for Tax Administration, and other law enforcement work to catch criminals sooner? Are there additional tools that you recommend which would require legislative action?

Response 1

For identity thieves, tax return fraud may be viewed as a low-risk, high-reward venture. Identity theft has become a large-scale operation, with "boiler room" operations involving the theft of massive lists of Social Security numbers. Apparently, there are networks of criminals who not only share stolen personal information but even present seminars about how to use this information to file bogus returns.¹ Such brazen behavior suggests that identity thieves are not sufficiently concerned with the possibility of criminal prosecution.

¹ See, e.g., Tampa Bay Times, "49 Accused of Tax Fraud and Identity Theft," (Sept. 2, 2011), available at <http://www.tampabay.com/news/publicsafety/crime/49-accused-of-tax-fraud-and-identity-theft/1189406>; Tampa Bay Online, "Police: Tampa Street Criminals Steal Millions Filing Fraudulent Tax Returns," at <http://www2.tbo.com/news/politics/2011/sep/01/11/police-tampa-street-criminals-steal-millions-filin-ar-254724/>.

The IRS's Criminal Investigation division (CI) initiated 276 fraud cases related to identity theft in FY 2011, with 81 convictions – up from 224 investigations and 40 convictions in FY 2010.² With hundreds of thousands of tax-related identity theft incidents reported each year, the figure of 81 convictions is a drop in the bucket. To respond more nimbly to identity theft situations, CI now has a designated liaison for identity theft in each of its major offices, but more action is required.

In addition to possible criminal prosecution, I believe identity thieves should be subject to significant civil penalties. Currently, the IRS does not have the authority to assess civil penalties against perpetrators for the amounts by which they have defrauded the government. I believe that civil monetary penalties would (1) be easier for the IRS to pursue than criminal prosecution, (2) have an increased deterrent effect on potential identity thieves, and (3) hit perpetrators where it matters – in their pocketbooks. I therefore recommend that Congress consider legislation to authorize the IRS to impose such civil penalties.

In April of this year, Representative Wasserman Schultz introduced a bill that would encourage the Attorney General to use all existing resources to bring perpetrators of identity theft to justice.³ While I agree that existing resources should be devoted to prosecuting identity thieves, I believe a significant increase in such resources (*i.e.*, funding) will be necessary to have a meaningful impact on identity theft prosecutions. I have not heard the IRS Criminal Investigation function claim that it needs greater authority to prosecute identity thieves, so I have no reason to believe that additional statutory tools are necessary at this time (except for additional funding). However, my office will remain actively engaged on this issue and may make additional recommendations in the future.

Question 2

Should State and local law enforcement have access to taxpayer information, such as refund data, in pursuing identity theft cases? Why or why not?

Response 2

Taxpayers have the right to expect that any information they provide to the IRS will not be used or disclosed by the IRS unless authorized by the taxpayer or by other provisions of law. The Internal Revenue Code (IRC) contains significant protections for the confidentiality of returns and return information. IRC § 6103 generally provides that returns and return information shall be confidential and then delineates a number of exceptions to this general rule. There is no exception for the release of identity theft information to state or local agencies.⁴

² Data obtained from the IRS Criminal Investigation division's research function (Mar. 13, 2012).

³ See H.R. 4362, *Stopping Tax Offenders and Prosecuting Identity Theft Act of 2012*.

⁴ Note, however, that certain disclosures to state law enforcement are permissible. See IRC § 6103(i)(3)(B)(i) (disclosure of return information, including taxpayer return information, can be made to the extent necessary to advise appropriate officers or employees of any state law enforcement agency of the imminent danger of death or physical injury to any individual;

However, IRC § 6103(c) provides that a taxpayer may consent to disclosure of returns and return information to any person designated by the taxpayer.

It is my understanding that some have called for the expansion of exceptions to IRC § 6103, ostensibly to help state and local law enforcement combat identity theft. I have significant concerns about loosening taxpayer privacy protections, and I do not believe that such an expansion of the statute is appropriate at this time. I believe the current framework of IRC § 6103 includes sufficient exceptions to allow the IRS to share information about identity thieves. The IRS Office of Chief Counsel has advised that the IRS may share the “bad return” and other return information of an identity thief with other federal law enforcement agencies investigating identity theft.⁵ In light of this advice, the IRS has implemented a pilot program in the State of Florida to facilitate a consent-based sharing of identity theft information with state and local law enforcement agencies.⁶

I believe this approach strikes an appropriate balance – protecting taxpayer return information while simultaneously giving state and local law enforcement authorities more information to help them investigate and combat identity theft. However, I am concerned that once the information is in the hands of state and local law enforcement, there is no prohibition in the tax code against redisclosure.

Therefore, I suggest that Congress consider modifying IRC § 6103(c) to explicitly limit the use of tax return information to the purpose agreed upon by the taxpayer (i.e., to allow state or local law enforcement to use the information solely to enforce state or local laws) and to prohibit the redisclosure of such information.⁷

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I hope you find these responses useful. If you have further questions, please feel free to contact my office at (202) 622-6100.

Sincerely,



Nina E. Olson
National Taxpayer Advocate

disclosure cannot be made to local law enforcement agencies). While identity theft may cause emotional and economic injury, the typical identity theft situation does not pose an imminent danger of death or physical injury.

⁵ IRS Office of Chief Counsel Memorandum, *Disclosure Issues Related to Identity Theft*, PMTA 2012-05 (Jan. 18, 2012).

⁶ See <http://www.irs.gov/privacy/article/0,,id=256965,00.html> (last visited June 8, 2012).

⁷ See National Taxpayer Advocate 2011 Annual Report to Congress 505.