

**DESCRIPTION OF H.R. 3832,
THE STOLEN IDENTITY REFUND FRAUD PREVENTION ACT OF 2015**

Scheduled for Markup
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HOUSE COMMITTEE ON WAYS AND MEANS
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INTRODUCTION

The House Committee on Ways and Means has scheduled a committee markup of H.R. 3832, the Stolen Identity Refund Fraud Prevention Act of 2015, on April 28, 2016. This document,¹ prepared by the staff of the Joint Committee on Taxation, provides a description of the bill.

¹ This document may be cited as follows: Joint Committee on Taxation, *Description of H.R. 3832, The Stolen Identity Refund Fraud Prevention Act of 2015* (JCX-39-16), April 27, 2016. This document can also be found on the Joint Committee on Taxation website at www.jct.gov.

A. Description of the Proposal

1. Modification of due dates for filing certain information returns

Present law requires persons to file an information return concerning certain transactions with other persons.² These returns are intended to assist taxpayers in preparing their income tax returns and to help the Internal Revenue Service (“IRS”) determine whether such income tax returns are correct and complete.

Reportable payments other than wages paid to employees

One of the primary provisions requires every person engaged in a trade or business who makes payments aggregating \$600 or more in any taxable year to a single payee in the course of the payor’s trade or business to file a return reporting these payments.³ Payments subject to this reporting requirement include fixed or determinable income or compensation, but do not include payments for goods or certain enumerated types of payments that are subject to other specific reporting requirements. Other reporting requirements are provided for various types of investment income, including interest, dividends, and gross proceeds from brokered transactions (such as a sale of stock) paid to U.S. persons.⁴

The person filing an information return with respect to payments described above is required to provide the recipient of the payment with a written payee statement showing the aggregate payments made and contact information for the payor.⁵ The statement must be supplied to payees by the payors by January 31 of the following calendar year.⁶

Information returns regarding wages paid to employees

Payors must report wage amounts paid to employees on information returns. They also are required to provide the employee with an annual statement showing the aggregate wages paid, taxes withheld, and contact information for the payor by January 31 of the following calendar year, using Form W-2, Wage and Tax Statement.⁷ For wages paid to employees, and

² Sections 6041-6050W of the Internal Revenue Code provide rules for third-party reporting generally. Except where otherwise stated, all section references are to the Internal Revenue Code of 1986, as amended (herein “Code”).

³ Sec. 6041(a). The information return generally is submitted electronically as a Form 1099 (*e.g.*, Form 1099-MISC, Miscellaneous Income) or Form 1096, Annual Summary and Transmittal of U.S. Information Returns, although certain payments to beneficiaries or employees may require use of Forms W-3 or W-2, respectively. Treas. Reg. sec. 1.6041-1(a)(2).

⁴ Secs. 6042 (dividends), 6045 (broker reporting) and 6049 (interest) and the Treasury regulations thereunder.

⁵ Sec. 6041(d).

⁶ Sec. 6041(d).

⁷ Sec. 6051(a).

taxes withheld from employee wages, the payors must file an information return with the Social Security Administration (“SSA”), using Form W-3, Transmittal of Wage and Tax Statements.⁸

Under the combined annual wage reporting (“CAWR”) system, the SSA and the IRS have an agreement, in the form of a Memorandum of Understanding, to share wage data and to resolve, or reconcile, the differences in the wages reported to them. Employers submit Forms W-2, (listing Social Security wages earned by individual employees), and W-3, (providing an aggregate summary of wages paid and taxes withheld) directly to SSA.⁹ After it records the wage information from Forms W-2 and W-3 in its individual Social Security wage account records, SSA forwards the information to IRS.¹⁰

Due dates for filing information returns

Information returns other than those reflecting wages and nonemployee compensation are generally due with the IRS on or before the last day of February of the year following the calendar year for which the return must be filed.¹¹ If filed electronically, such returns are due March 31.¹²

Although information returns containing wages reportable on Form W-2 and nonemployee compensation were previously subject to the general filing deadline described above, the due dates were revised in 2015 for returns relating to calendar years after December 31, 2015. Under current law, payors must file information returns for wages and nonemployee compensation by January 31 of the year following the calendar year in which the amounts were paid, and are not eligible for the extended filing date for electronically filed returns.¹³ Nonemployee compensation generally includes fees for professional services, commissions, awards, travel expense reimbursements, or other forms of payments for services performed for the payor’s trade or business by someone other than in the capacity of an employee.

⁸ Treas. Reg. sec. 31.6051-2; IRS, “Filing Information Returns Electronically,” Pub. 3609 (Rev. 12-2011); Treas. Reg. sec. 31.6071(a)-1(a)(3)(i).

⁹ Pub. L. No. 94-202, sec. 232, 89 Stat. 1135 (1976) (effective with respect to statements reporting income received after 1977).

¹⁰ Employers submit quarterly reports to IRS on Form 941, Employer’s Quarterly Federal Tax Return, regarding aggregate quarterly totals of wages paid and taxes due. IRS then compares the W-3 wage totals to the Form 941 wage totals.

¹¹ Treas. Reg. sec. 31.6071(a)-1(a)(3)(i).

¹² Sections 6011(e) and 6071(b) apply to “returns made under subparts B and C of part III of this subchapter”; Treas. Reg. sec. 301.6011-2(b) mandates use of magnetic media by persons filing information returns identified in the regulation or subsequent or contemporaneous revenue procedures and permits use of magnetic media for all others.

¹³ See, Div. Q, section 201, the Protecting Americans from Tax Hikes Act of 2015, (“PATH Act”), Pub. L. No. 114-113 (December 18, 2015).

Description of Proposal

The proposal changes the due date for filing returns reporting payments of wages and employee compensation to February 15 of the calendar year following the year in which the amounts were paid.

The proposal also requires the Secretary of Treasury to submit to the House Committee on Ways and Means and the Senate Committee on Finance recommendations regarding the information reporting due dates and processes for improving use of such information to prevent refund fraud, including such matters as the advisability of accelerating the information reporting date earlier than February 15, processes to match information reported on third-party information returns with claims on income tax returns, methods to correct any errors found using the matching of information returns and tax returns, and any other categories of information return the due date for which could be accelerated to reduce potential for fraud or tax avoidance.

Effective Date

The proposal is effective on the date of enactment.

2. Centralized point of contact for identity theft victims

Present Law

Disparate elements in the tax laws and administration are implicated in identity theft. The tax aspects of identity theft can generally occur in one of two ways. In refund fraud, a perpetrator obtains someone else's identifying information and submits an individual income tax return using the name and Social Security number of the victim, with a falsified Form W-2, Wage and Tax Statement, and fraudulently claims a refund. In other cases, the stolen identifying information is used in order to obtain employment; the returns then filed by the persons employed using the stolen identity may be based on the actual wages and withholding. Victims of the fraud include the individuals whose identifying information was stolen as well as the businesses whose systems may have been breached to obtain that personal information.

The IRS describes its procedures for addressing both types of fraud in its manual. The IRS first established the Identity Protection Specialized Unit ("IPSU") to assist victims of identity theft, but taxpayers were generally referred to other operating units of the IRS to deal with various aspects of their case.¹⁴ Subsequently reorganized and now known as the Identity Theft Victim Assistance ("IDTVA") organization, it is staffed with specially trained employees who are able to assess the case, identify issues, and assist the taxpayer in getting the correct return filed, refunds issued, etc.¹⁵ The IDTVA organization's work is coordinated by the IRS'

¹⁴ TIGTA, Ref. No. 2012-40-050, *Most Taxpayers Whose Identities Have Been Stolen to Commit Refund Fraud Do Not Receive Quality Customer Service* (May 2012).

¹⁵ A description of the services provided by the IDTVA organization is available at <https://www.irs.gov/uac/Newsroom/IRS-Identity-Theft-Victim-Assistance-How-It-Works>.

Identity Protection Program through the auspices of an oversight office within the Wage and Investment Operating Division.¹⁶

If a victim thinks he or she is not being properly served by the IRS or the IDTVA organization, the taxpayer may be eligible for assistance from the Taxpayer Advocate Service (“TAS”) as in the case of economic hardship caused by the theft. In such instances, the TAS will assign a case advocate to the taxpayer’s account.

Description of Proposal

The proposal requires the Secretary of the Treasury (or his or her delegate) (“Secretary”) to establish procedures to implement a centralized point of contact for taxpayers adversely affected by identity theft of any type. The centralized point of contact may be a team or subset of specially trained employees who can work across functions to resolve problems for the victim and who is accountable for handling the case to completion. The makeup of the team may change as required to meet IRS needs, but the procedures must ensure continuity of records and case history and may require notice to the taxpayer in appropriate instances.

Effective Date

The provision is effective on the date of enactment.

3. Taxpayer notification of suspected identity theft

Present Law

Section 6103 provides that returns and return information are confidential and may not be disclosed by the IRS, other Federal employees, State employees, and certain others having access to the information except as provided in the Code.¹⁷ The definition of “return information” is very broad and includes any information gathered by the IRS with respect to a person’s liability or possible liability under the Code for any tax, penalty, interest, fine, forfeiture, or other imposition or offense.¹⁸ Thus, information gathered by the IRS in connection with an

¹⁶ Internal Revenue Service, *Identity Protection and Victim Assistance*, Internal Revenue Manual Chapter 23, paragraph 25.23.1 et seq. (September 2, 2015).

¹⁷ Sec. 6103(a).

¹⁸ Sec. 6103(b)(2). Return information is:

- a taxpayer’s identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer’s return was, is being, or will be examined or subject to other investigation or processing, or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense,

investigation of a person for a Title 26 offense, such as fraud, is the return information of the person being investigated and is subject to the confidentiality restrictions of section 6103.

In cases not involving violations of Title 26, under a Privacy Act Notice, the Treasury Inspector General for Tax Administration is allowed to disclose information to complainants, victims, or their representatives (defined to be a complainant's or victim's legal counsel or a Senator or Representative whose assistance the complainant or victim has solicited) concerning the status and/or results of an investigation or case arising from the matters of which they complained and/or of which they were a victim, including, once the investigative subject has exhausted all reasonable appeals, any action taken. Information concerning the status of the investigation or case is limited strictly to whether the investigation or case is open or closed. Information concerning the results of the investigation or case is limited strictly to whether the allegations made in the complaint were substantiated or were not substantiated and, if the subject has exhausted all reasonable appeals, any action taken.¹⁹

Description of Proposal

The proposal requires the Secretary to notify a person whose identity was used without authorization that such use occurred, as soon as practicable after determining such use occurred and without jeopardizing an investigation relating to tax administration.

The proposal also requires the Secretary to notify the person whose identity was used without authorization of any criminal charges that are brought against any person with respect to the unauthorized use, as soon as practicable.

Effective Date

The proposal applies to determinations made after the date of enactment.

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- any part of any written determination or any background file document relating to such written determination (as such terms are defined in section 6110(b)) which is not open to public inspection under section 6110,
 - any advance pricing agreement entered into by a taxpayer and the Secretary and any background information related to such agreement or any application for an advance pricing agreement, and
 - any closing agreement under section 7121, and any similar agreement, and any background information related to such an agreement or request for such an agreement.

Return information does not include data in a form which cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer.

¹⁹ See 75 Fed. Reg. 20715 (April 20, 2010) (relating to TIGTA Office of Investigation files).

4. Extend the IRS authority to require a truncated Social Security Number on Form W-2

Present Law

For wages paid to employees, and taxes withheld from employee wages, employers must file an information return with the Social Security Administration by January 31 of the year following the calendar year for which the return must be filed, using Form W-3, Transmittal of Wage and Tax Statements.²⁰ The Form W-3 includes the taxpayer's Social Security number ("SSN"), wages paid, taxes withheld, and other information. Employers also must provide a written payee statement, using Form W-2, Wage and Tax Statement, to each employee, on or before January 31 of the succeeding year. The Form W-2 shows the remuneration paid to that employee during the calendar year and other information and must include a taxpayer identification number for the employee.²¹ Section 6109 requires that the filer provide the taxpayer's "identifying number" which is an individual's SSN except as otherwise specified in regulations.²² Accordingly, for Forms W-2, the Treasury Department has the authority to require or permit filers to use a number other than a taxpayer's SSN, including a truncated SSN (the last four numbers of the SSN).

Description of Proposal

The proposal requires employers to include an "identifying number" for each employee, rather than an employee's SSN, on Form W-2, which is current law.

Effective Date

The proposal is effective on the date of enactment.

5. Electronic filing opt-out

Present Law

The Internal Revenue Service Restructuring and Reform Act of 1998 ("Restructuring Act")²³ established a Congressional policy to promote the paperless filing of Federal tax returns and set a goal for the IRS to have at least 80 percent of all Federal tax and information returns

²⁰ Treas. Reg. sec. 31.6051-2; IRS, "Filing Information Returns Electronically," Pub. 3609 (Rev. 12-2011); Treas. Reg. sec. 31.6071(a)-1(a)(3)(i).

²¹ Prior to passage of the PATH Act, section 6051 required that the SSN of an employee be included on the payee statements. Section 409(a), PATH Act, Pub. Law 114-113.

²² Sec. 6109(d); See Treas. Reg. sec. 301.6109-1.

²³ Sec. 2001(a), Pub. L. No. 105-206.

filed electronically by 2007.²⁴ Section 2001(b) of RRA 1998 requires the IRS to establish a 10-year strategic plan to eliminate barriers to electronic filing.

Present law requires the Secretary to issue regulations regarding electronic filing and specifies certain limitations on the rules that may be included in such regulations.²⁵ The statute requires that Federal income tax returns prepared by specified tax return preparers be filed electronically,²⁶ and that all partnerships with more than 100 partners be required to file electronically. For taxpayers other than partnerships, the statute prohibits any requirement that persons who file fewer than 250 returns during a calendar year file electronically. With respect to individuals, estates, and trusts, the Secretary may permit, but generally cannot require, electronic filing of income tax returns. In crafting any of these required regulations, the Secretary must take into account the ability of taxpayers to comply at a reasonable cost.

Individuals who either report to the IRS that they are victims of identity theft or who the IRS determines independently are victims of identity theft are eligible to receive a special, six-digit identity protection personal identification number (“IP PIN”) to use in lieu of their social security number as a taxpayer identifying number on returns the next filing season. If the taxpayer files electronically, an additional, e-file PIN is also required.

Description of Proposal

The proposal requires that, not later than 180 days after enactment, the Secretary implement a program under which an identity theft victim may elect to prevent any return being filed by or on behalf of that victim in electronic format.

Effective Date

The proposal is effective on the date of enactment.

6. Criminal penalty for using a false identity in connection with tax fraud

Present Law

The Code does not contain civil or criminal penalties specifically targeted at identity theft. Instead, most claims for tax refund-related identity theft are prosecuted as false claims under section 287 of title 18, and are classified as felonies, generally punishable by a penalty of up to \$250,000 and imprisonment for up to five years. In addition, section 1028A of title 18

²⁴ The Electronic Tax Administration Advisory Committee, the body charged with oversight of IRS progress in reaching that goal, reported that e-filing by most categories of taxpayers exceeded 80 percent in the 2014 filing season, but projected an overall rate of 77.5 percent based on all Federal returns. See Electronic Tax Administration Advisory Committee, *Annual Report to Congress*, June 2015 IRS Pub. 3415, page 9, available at <https://www.irs.gov/pub/irs-pdf/p3415.pdf>.

²⁵ Sec. 6011(e).

²⁶ Section 6011(e)(3)(B) defines a “specified tax return preparer” as any return preparer who reasonably expects to file more than 10 individual income tax returns during a calendar year.

provides for the statutory crime of “aggravated identity theft” in cases where the identity of another individual is used to commit enumerated crimes and generally adds an additional two-year prison term (herein the “Aggravated Identity Theft Statute”). However, that section does not cover and specifically carves out any tax offenses under the Code or tax-related offenses under Title 18, including conspiracy to defraud the government with respect to claims, false, fictitious or fraudulent claims, or conspiracy.

The Code includes two provisions, sections 7206 and 7207, which cover fraud and false statements and fraudulent returns. Sections 7206(1) and (2) cover situations that could potentially involve identity theft. Those provisions make it a felony, punishable by a penalty of up to \$100,000 (\$500,000 for a corporation), imprisonment for up to three years, or both, plus prosecution costs, for a person who: (i) makes a false declaration under penalties of perjury; and (ii) aids or assists in the preparation or presentation of any return or other document that is false as to a material matter. Section 7207 treats as a misdemeanor the willful delivery or disclosure to any officer or employee of the IRS of fraudulent or false lists, returns, accounts, statements, or other documents, punishable by a penalty of up to \$10,000 (\$50,000 for corporations), imprisonment for up to a year, or both.

Description of Proposal

Willful misappropriation of a taxpayer’s identity for the purpose of making any list, return account statement or other document submitted to the Secretary is added to section 7206 of the Code as a felony, punishable by a fine of up to \$250,000 (\$500,000 for a corporation), imprisonment for up to five years, or both, plus prosecution costs. For purposes of this crime, a taxpayer’s identity is defined to be coextensive with the definition of that term found in section 6103(b)(6).²⁷

The proposal adds the new felony to the list of predicate offenses contained in the Aggravated Identity Theft Statute.

Effective Date

The proposal applies to offenses committed after the date of enactment.

7. Improvement in access to information in the National Directory of New Hires

Present Law

The Office of Child Support Enforcement of the Department of Health and Human Services (“HHS”) maintains the National Directory of New Hires (the “Directory”), which is a database that contains newly-hired employee data from Forms W-4, quarterly wage data from State and Federal employment security agencies, and unemployment benefit data from State

²⁷ Section 6103(b)(6) provides that “[t]he term ‘taxpayer identity’ means the name of a person with respect to whom a return is filed, his mailing address, his taxpayer identifying number (as described in section 6109), or any combination thereof.”

unemployment insurance agencies. The Directory was created to help State child support enforcement agencies enforce obligations of parents across State lines.

Under the Social Security Act, the IRS may obtain data from the Directory for the sole purpose of administering the earned income credit (“EIC”)²⁸ and verifying a taxpayer’s employment that is reported on a tax return.²⁹ The IRS also may negotiate for access to employment data directly from State agencies responsible for such data, to the extent permitted by the laws of the various States. Generally, the IRS obtains such employment data less frequently than quarterly, due to the significant internal costs it incurs in preparing these data for use.³⁰

Description of Proposal

The proposal amends the Social Security Act to expand IRS access to the Directory data for the sole purpose of identifying and preventing false or fraudulent tax return filings and claims for refund. Data obtained by the IRS from the Directory are protected by existing taxpayer privacy law.³¹

Effective Date

The proposal is effective on the date of enactment.

8. Repeal provision regarding certain tax compliance procedures and reports

Present Law

Under present law, taxpayers generally are required to calculate their own tax liabilities and submit returns showing their calculations. The IRS Restructuring and Reform Act of 1998 (“Restructuring Act”) requires the Secretary to study the feasibility of, and develop procedures for, the implementation of a return-free tax system for appropriate individuals for taxable years beginning after 2007.³² The Secretary is required annually to report to the tax-writing committees on the progress of the development of such system.

²⁸ Sec. 32(a)(1).

²⁹ 42 U.S.C. secs. 653 and 653a.

³⁰ See Department of the Treasury, *General Explanations of the Administration’s Fiscal Year 2016 Revenue Proposals*, February 2015, p.238.

³¹ See section 6103(b)(2)(A), providing that information received by or recorded by or furnished to the Secretary with respect to the existence or possible existence of a liability under Title 26 is return information. Section 6103(a) provides that return information is confidential and cannot be disclosed except as authorized. See section 7431, 7213 and 7213A for civil and criminal penalties for the unauthorized disclosure or inspection of return information.

³² Pub. L. No. 105-206, sec. 2004.

The Secretary's first report on the development of the return-free filing system to the tax-writing committees was due by June 30, 2000. The "Report to the Congress on Return-Free Tax Systems: Tax Simplification Is a Prerequisite," was submitted on December 23, 2003.

Description of Proposal

The proposal repeals section 2004 of the Restructuring Act.

Effective Date

The proposal is effective on the date of enactment.

9. Require the IRS to prepare a report on identity theft refund fraud

Present Law

The IRS is not currently required to prepare reports to Congress on identity theft refund fraud.

Description of Proposal

The proposal requires the IRS to report to the House Committee on Ways and Means and the Senate Committee on Finance no later than September 30, 2018, on the extent and nature of fraud involving the use of a misappropriated taxpayer identity with respect to claims for refund under the Code during the preceding completed income tax filing season. Similar reports are required biannually thereafter until September 30, 2026.

The reports must detail IRS efforts to combat identity theft fraud, including an update on the victims' assistance unit; providing an update on IRS efforts and results associated with limiting multiple refunds to the same financial accounts and physical addresses, with appropriate exceptions; and discussing IRS efforts associated with other avenues for addressing identity theft refund fraud (*e.g.*, the hash-based message authentication code).

The proposal also requires that the reports provide updates on the implementation of the bill, analyze other ways to accelerate information matching, and identify the need for any further legislation to protect taxpayer resources and information, including preventing tax refund fraud related to the IRS e-Services tools and electronic filing identification numbers ("EFINs").

Effective Date

The proposal is effective upon the date of enactment.

B. Estimated Revenue Effect of the Proposal

The proposal cannot be readily estimated at this time but is likely to have a small negative effect on Federal fiscal year budget receipts for the period 2016-2026. The revenue loss is attributable to the inclusion of section 2, which delays submission of information returns for wages and nonemployee compensation. When originally introduced, the bill would have had the effect of accelerating the due dates for such information returns.

The extent to which the proposal may increase or decrease Federal outlays for the same period 2016-2026 has not been estimated. In accordance with section 402 of the Budget Act, the Congressional Budget Office has jurisdiction to estimate the effect on direct or discretionary spending.