



American Institute of CPAs
1455 Pennsylvania Avenue, NW
Washington, DC 20004

September 15, 2015

The Honorable Orrin G. Hatch, Chairman
Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Ron Wyden, Ranking Member
Senate Committee on Finance
221 Dirksen Senate Office Building
Washington, DC 20510

RE: Chairman's Mark of a Bill to Prevent Identity Theft and Tax Refund Fraud

Dear Chairman Hatch and Ranking Member Wyden:

The American Institute of Certified Public Accountants (AICPA) commends the Committee on Finance on their continuing efforts to combat identity theft and tax fraud, and appreciates the opportunity to provide detailed comments on many of the provisions contained in the [Chairman's Mark of a Bill to Prevent Identity Theft and Tax Refund Fraud](#) ("Bill" or "Proposal"). The growing amount of fraudulent tax refunds paid and the economic and emotional impact to individual victims of identity theft are unacceptable.

We have previously supported and continue to support several proposals addressing identity theft, including issues regarding the safe harbor *de minimis* errors on information returns, the truncation of social security numbers (SSNs) on Forms W-2, *Wage and Tax Statement*, and the expansion of the IP PIN system.¹ We have also provided recommendations on a few of the provisions to more effectively and efficiently address identity theft and tax refund fraud. However, we have concerns regarding the provision that grants the Department of the Treasury and Internal Revenue Service (IRS) broad authority to regulate paid tax return preparers. At a minimum, we suggest you consider specific recommendations to (1) limit the IRS's authority to require a preparer tax identification number (PTIN) and (2) protect the public from marketplace confusion.

¹ See AICPA letters on [S.2736 – Tax Refund Theft Prevention Act of 2014](#) on December 8, 2014; [Tax Reform Discussion Draft on Tax Administration](#) on January 16, 2014; [Identity Theft and Tax Fraud Prevention Act of 2013 and Recommendations on Efforts to Combat Identity Theft](#) on June 27, 2013; and [Truncated Taxpayer Identification Numbers](#) on February 20, 2013; and testimony submitted for the U.S. Senate Committee on Finance hearing on [Tax Fraud, Tax ID Theft and Tax Reform: Moving Forward with Solutions](#), April 16, 2013.

Require the IRS to Prepare a Report on Identity Theft Refund Fraud (Sec. 2)

The AICPA supports this provision which requires five bi-annual reports to the Committee on Finance and the U.S. House Committee on Ways and Means, to include the extent and nature of the fraud involving the use of misappropriated taxpayer identity with respect to claims for refund and the detection, prevention and enforcement activities by the IRS with respect to:

- detailing IRS efforts to combat identity theft fraud, including an update of the victims' assistance unit;
- increasing the effectiveness of IRS efforts to limit multiple refunds to the same financial accounts and physical addresses;
- encouraging the IRS efforts associated with other avenues for addressing identity theft refund fraud;
- providing an update on the implementation of the bill; and
- analyzing other ways to accelerate information matching and the need for further legislation to protect taxpayer resources and information.

We believe the report would provide useful information to Congress in understanding when the provisions are implemented, measuring how effective those provisions are in deterring fraud and determining the impact of this bill on curbing tax return identity theft.

Criminal Penalty for Misappropriating Taxpayer Identity in Connection with Tax Fraud (Sec. 4)

The Proposal makes it a felony under the Internal Revenue Code (IRC or "Code") for a person to use a stolen identity to file a return. The AICPA supports this provision because we believe the penalty appropriately penalizes those individuals that commit the tax fraud regardless of whether the culprit is a tax preparer or someone else.

Extend the IRS Authority to Require a Truncated Social Security Number on Form W-2 (Sec. 5)

The Proposal requires employers to include an identifying number for each employee rather than a SSN on Form W-2. We fully support this provision and applaud your efforts to take positive steps toward protecting the privacy and security of personal information.

In addition, the AICPA recommends an extension of the provision to require the use of a truncated identification number (i.e., SSN, IRS individual taxpayer identification number (TIN), or IRS adoption TIN²) on all types of tax forms and returns provided to a client, employee or other recipient. We also support modification of Code section 170(f)(12),³ regarding contributions of cars, boats and airplanes, to allow the truncation of the SSN on the acknowledgement letter to the donor.

² An adoption TIN is a temporary identification number for a child in the process of an adoption where the SSN is not obtained or unattainable at that moment.

³ All section references in this letter are to the Internal Revenue Code of 1986, as amended, or the Treasury regulations promulgated thereunder.

Enhancements to the IRS PIN Program (Sec. 6)

The Proposal allows the Secretary of the Treasury to issue an Identity Protection Personal Identification Number (IP PIN) to any individual requesting protection from identity theft-related tax fraud for use with filing his/her Federal tax return. The AICPA fully supports this provision.

This program is currently offered only to victims of identity theft. The AICPA has previously urged the IRS to consider issuing IP PINs to all individuals, and appreciates Congressional action in this area.

Increase Electronic Filing of Returns (Sec. 7)

The AICPA supports the provision to increase electronic filing of returns. Many states already require tax return preparers to e-file taxpayer returns, therefore, it is not overly burdensome to require e-filing of all individual tax returns prepared by a tax return preparer.

The Proposal requires that any individual income tax return prepared by a tax return preparer be filed electronically, regardless of the number of returns filed by such return preparers. Many individual taxpayers, particularly seniors, remain uncomfortable with the internet or do not have secure online connections. The taxpayer should still have the ability to opt out of e-filing a paid-preparer tax return without subjecting the tax return preparer to a penalty. In addition, individual taxpayers who prepare their own returns and do not e-file should also be allowed a waiver from e-filing.

Modify Due Dates for Filing Certain Information Returns (Sec. 8)

The Proposal requires the payor or employer to file all information forms with the IRS within 15 days of the due date of providing such forms to taxpayers and recommends a report on whether other due dates should be accelerated for other forms.

The AICPA supports the acceleration of due dates for filing information returns, including Form W-2, Form W-3 and Forms 1099 Misc with the IRS. Such an acceleration of the due date to the IRS should increase the likelihood that the agency can properly match the reported information with amounts reported on tax returns, thereby reducing the risk of tax refund identity theft.

Moreover, we request that as soon as the Social Security Administration (SSA) receives the W-2 information from employers, that the SSA immediately transfer that wage information to the IRS. This will allow the IRS to immediately match the reported information with amounts reported on tax returns.

Safe Harbor for *De Minimis* Errors on Information Returns, Payee Statements, and Withholding (Sec. 9)

Under this provision, information returns, with an error of no more than \$100 in income, or an error of no more than \$25 with respect to withholdings or backup withholding, would be considered as having been

filed with the correct information. The AICPA appreciates and continues to support safe harbor provisions for *de minimis* errors on information returns.⁴

We also recommend allowing reporting entities (including employers, partnerships, S corporations, estates and trusts) to have the ability to “roll over” small information return errors, contained on Forms 1099 and W-2 and Schedules K-1, in the following year, rather than filing amended or corrected forms. We propose that Congress provides an exception to file or furnish a corrected information return in the current year if a single error amount differs from the correct amount for a recipient by no more than \$200 in income. The reporting entity would report the differential amount in the year following the error. The identified error and corrected information should also include the original date and transaction to which it relates.

The AICPA believes the increased *de minimis* safe harbor amount combined with a rollover provision will streamline the tax return reporting process for the government, reporting entities and taxpayers. The preparation, filing, processing and examining of amended returns is costly to everyone. These recommendations would make the entire process more efficient.

Internet Platform for Form 1099 Filings (Sec. 10)

The AICPA supports the proposal requiring the Secretary of the Treasury to make available, by January 1, 2020, an internet website or other electronic media to allow taxpayers to securely prepare, file and distribute Forms 1099. Furthermore, we recommend that the website make available to taxpayers all relevant Forms 1099 and Forms W-2 needed to file their tax returns. We believe the website will reduce the cost of compliance, accelerate the receipt of information and enable the IRS to more efficiently and effectively match reported amounts against individual tax returns.

Requirement that Electronically-Prepared Paper Returns Include Scannable Code (Sec. 12)

The AICPA supports the provision requiring taxpayers who prepare returns electronically, but file on paper, to print the returns with a scannable bar code. To clarify how the provision applies, the Committee on Finance may want to consider replacing the word “electronically” with the phrase “using computer or internet-based software.”

Increased Penalty for Improper Disclosure or Use of Information by Preparers of Returns (Sec. 14)

The AICPA opposes an increase in tax return preparer penalties under IRC sections 7216, as provided for in the Bill.

The focus of efforts to curb identity theft should fall squarely on the causes of identity theft. The true cause of identity theft does not stem from inappropriate behavior by tax return preparers. Tax-related identity theft is typically committed with the personal information of individuals who have no filing

⁴ AICPA comment letter on [S.2736 – Tax Refund Theft Prevention Act of 2014](#) on December 8, 2014.

requirement.⁵ Identity thieves often obtain personal information by theft or find the necessary personal information on the internet. For the tax-related identity theft crimes that are committed by tax return preparers, there are numerous other severe criminal penalties that already can be imposed on those individuals.⁶ Thus, increasing the civil penalties for improper disclosure or use of tax return information by tax return preparers will not deter nor curb tax return preparation identity theft and will therefore fail to help Congress achieve their stated objective of preventing identity theft.

Given the other criminal provisions available to deter tax-related identity theft, increasing the penalties under sections 7216 and 6713 is unnecessary and may have unintended consequences if such penalties are applied against members of the tax return preparer community in situations involving inadvertent disclosures or uses of tax return information. We believe the existing penalties in sections 7216 and 6713 provide adequate safeguards in the deterrence of identity theft by way of inappropriate actions by tax return preparers.⁷

Provide that the Department of the Treasury and the IRS have Authority to Regulate all Paid Tax Return Preparers (Sec. 15)

The AICPA has always been a steadfast supporter of the goals of enhancing compliance and elevating ethical conduct. Ensuring that tax preparers are competent and ethical is critical to maintaining taxpayer confidence in our tax system. Indeed, these goals are consistent with AICPA's own Code of Conduct and enforceable tax ethical standards. However, the AICPA has serious concerns and misgivings about granting the IRS unlimited authority to regulate tax return preparers.

In order to prevent potential overregulation, unnecessary administrative costs, marketplace confusion or other unintended consequences, we would recommend that Congress prescript language that grants the IRS the specific authority necessary to address the concerns of incompetent and fraudulent, currently-unenrolled tax return preparers. At a minimum, we encourage Congress to (1) limit the IRS's authority to require a PTIN and (2) require the IRS to take steps to mitigate marketplace confusion.

⁵ Testimony of Russell George, Treasury Inspector General for Tax Administration, before the House Committee on Oversight and Government Reform Subcommittee on Government Organization, Efficiency and Financial Management; ["Identity Theft and Tax Fraud: Growing Problems for the Internal Revenue Service, Part IV"](#) on November 29, 2012.

⁶ For example, the crime of identity fraud carries a maximum sentence of 15 years in prison and a maximum fine of \$250,000 for each count. The crime of preparation and presentation of false and fraudulent federal income tax returns carries a maximum sentence of three years in prison and a maximum fine of \$250,000.

⁷ Effective in 2009, Treas. Reg. § 301.7216 addresses modern return preparation practices, including electronic filing and the cross marketing of financial and commercial products and services by tax return preparers. Absent a specific exception, Treas. Reg. § 301.7216 generally prohibits the disclosure or use of tax return information without the client's explicit, written consent. In general, a "disclosure" of tax return information involves a disclosure by the preparer of a client's return information to a third party. A "use" of tax return information generally involves the use of the return information by the preparer potentially for the purposes of offering non-tax services to the taxpayer. Under section 7216, a tax return preparer is subject to a criminal penalty for "knowingly or recklessly" disclosing or using tax return information. Each violation of section 7216 could result in a fine of up to \$1,000 or one year of imprisonment, or both. Section 6713, the companion civil penalty, imposes a \$250 penalty on a preparer for each prohibited disclosure or use of the return information, not to exceed \$10,000.

Limitation on IRS's authority to require a PTIN

The IRS currently requires all “preparers” to obtain a PTIN. Under Circular 230, § 10.8, “Any individual who for compensation prepares or assists with the preparation of all or substantially all of a tax return or claim for refund must have a preparer tax identification number...”

However, the IRS has not initiated any compliance initiatives geared towards non-signers nor shown any data regarding the benefits of requiring non-signers to register for a PTIN. In the meantime, non-signers and their firms or companies are required to determine if individuals who assisted with a tax return elevate to the level of a “preparer” and then incur the annual cost of a PTIN.

We strongly urge Congress to limit the IRS's authority to require the use of PTINs to only those individuals who (1) sign a tax return or claim for refund, and (2) are involved in the preparation of tax returns or claims for refund, but are *not* supervised by an attorney, certified public accountant, or “enrolled preparer” (i.e., enrolled agent, enrolled retirement plan agent, or enrolled actuary authorized to practice before the IRS under Circular 230).

Our recommended modification would exempt non-signers from the requirement to obtain a PTIN if those non-signers are (i) supervised by an attorney, certified public accountant, enrolled agent, enrolled retirement plan agent, or enrolled actuary authorized to practice before the IRS under Circular 230; and (ii) the supervising attorney, certified public accountant, enrolled agent, enrolled retirement plan agent, or enrolled actuary signs the tax returns or claims for refund prepared by the individual.

Mitigation of marketplace confusion

Some taxpayers are already confused by the different qualifications of preparers and the varying practice rights that they individually possess. The IRS should be directed to take steps to mitigate that confusion on their website, in their publications and in any public-facing database of preparers. Prior to [*Loving v. IRS*](#), the IRS recognized the potential for marketplace confusion when they required the currently-unenrolled community be made subject to the guidance in Notice 2011-45, 2011-25 IRB 886 with regard to advertising restrictions.

To mitigate marketplace confusion, we strongly recommend that currently-unenrolled PTIN holders using any paid advertising involving print, television, radio, or other medium – *in which the individual represents themselves as a PTIN holder, a registered tax return preparer or some type of a new IRS category of return preparers* – to display or broadcast a statement explaining the differences between the different type of preparers (e.g., qualifications) and, most importantly, educating the public that the IRS does not endorse any particular tax return preparer.

Improvement in Access to Information in the National Directory of New Hires for Tax Administration Purposes (Sec. 16)

The AICPA supports granting limited access to the IRS in utilizing the National Directory of New Hires (NDNH), a database established to assist child support agencies by providing wage and employment information of individuals. Specifically, we support granting the IRS access for the sole purpose of

The Honorable Orrin G. Hatch
The Honorable Ron Wyden
September 15, 2015
Page 7 of 7

identifying and preventing fraudulent tax return filings and claims for refund. Restricting immediate access of the NDNH to users with legitimate fraud prevention needs and delaying access to other users is a reasonable way to support fraud prevention efforts.

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Generally, we recommend an effective date for these administrative provisions of January 1 of the second calendar year after the date of enactment. This timeline will ensure compliance with the provisions and sufficient time for taxpayers, third party reporting entities and the IRS to make processing and programming modifications.

The AICPA is the world's largest member association representing the accounting profession, with more than 400,000 members in 145 countries and a 125-year heritage of serving the public interest. Our members advise clients on Federal, state and international tax matters and prepare income and other tax returns for millions of Americans. Our members provide services to individuals, not-for-profit organizations, small and medium-sized businesses, as well as America's largest businesses.

The AICPA appreciates your consideration of our recommendations and welcomes the opportunity to discuss these comments or to answer any questions that you may have. I can be reached at (801) 523-1051 or tlewis@sisna.com; or you may contact Melissa Labant, AICPA Director of Tax Advocacy, at (202) 434-9234, or mlabant@aicpa.org.

Sincerely,



Troy K. Lewis, CPA
Chair, AICPA Tax Executive Committee

cc: Senate Committee on Finance Members
The Honorable John Koskinen, Commissioner, Internal Revenue Service
The Honorable Mark Mazur, Assistant Secretary for Tax Policy, Department of the Treasury