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CERTIFIED PUBLIC ACCOUNTANTS

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Identity Theft Refund Fraud

Cross References

- FS-2014-3, January 2014

The IRS has seen a significant increase in refund fraud that involves identity thieves who file false claims for refunds by stealing and using someone's Social Security number. The investigative work done by Criminal Investigation (CI) is a major component of the IRS' efforts to combat tax-related identity theft.

Statistical Data

In fiscal year 2013, the IRS initiated approximately 1,492 identity theft related criminal investigations, an increase of 66% over investigations initiated in FY 2012. Direct investigative time applied to identity theft related investigations has increased 216% over the last two years. Prosecution recommendations, indictments, and those convicted and sentenced for identity theft violations have increased dramatically since FY 2011. Sentences handed down for convictions relating to identity theft have been significant, ranging from two months to 317 months.

	FY 2013	*FY 2012*	*FY 2011*
Investigations Initiated	1492	898	276
Prosecution Recommendations	1257	544	218
Indictments/Informations	1050	494	165
Sentenced	438	223	80

Enforcement Efforts

Criminal Investigation is committed to investigating and prosecuting identity thieves who attempt to defraud the federal government by filing fraudulent refund claims using another person's identifying information.

The IRS continues to seek out and identify additional tools and methods to combat the proliferation of tax-related identity theft. Fiscal year 2013 efforts include the following.

Identity theft enforcement sweeps. In January 2013, Criminal Investigation conducted a coordinated identity theft enforcement sweep in collaboration with DOJ-Tax and United States Attorney's Offices throughout the country. This nationwide effort resulted in 734 enforcement actions related to identity theft and refund fraud and involved 389 individuals, 109 arrests, 48 search warrants, and 189 indictments, information and criminal complaints.

Law Enforcement Assistance Program. In March 2013, IRS announced to the public that the Law Enforcement Assistance Program, formerly known as the Identity Theft Pilot Disclosure Program, was expanded nationwide. This program provides for the disclosure of federal tax return information associated with the accounts of known and suspected identity victims of identity theft with the express written consent of those victims. There are currently more than 300 state/local law enforcement agencies from 35 states participating. For FY 2013, more than 2,400 requests had been received from state and local law enforcement agencies.

Identify Theft Clearinghouse (ITC). The Identity Theft Clearinghouse (ITC) continues to develop and refer identity theft refund fraud schemes to CI Field Offices for investigation. For FY 2013 the ITC had received more than 1,400 identity theft related leads.

Data Processing Center (DPC) identity theft victims list process. This process centralizes identity theft victims' lists and information forwarded to IRS-CI by other federal, state and local agencies during nationwide investigative efforts. The information is analyzed and necessary adjustments are made to accounts of taxpayers that are likely targets of ID theft. The DPC processed over 71.7% more identity records in FY 2013 than it did in FY 2012.

Multi-agency task forces and working groups. CI is the lead agency or actively involved in more than 30 multi-regional task forces or working groups including state/local and federal law enforcement agencies solely focusing on identity theft.

The following are highlights from significant identity-theft cases. All details are based on court documents.

Self-proclaimed "First Lady" of tax fraud sentenced. On July 16, 2013, in Tampa, Florida, Rashia Wilson, was sentenced to 234 months in prison on wire fraud and aggravated identity theft charges stemming from her scheme to defraud the IRS, and to a consecutive 18 months in prison for being a felon in possession of a firearm. Wilson was also ordered to forfeit $2,240,096, which constituted the proceeds traceable to the offense. According to court documents, from at least April 2009 through their arrests in September 2012, Wilson and her co-conspirator, Maurice J. Larry, engaged in a scheme to defraud the IRS by negotiating fraudulently obtained tax refunds. They did so by receiving U.S. Treasury checks and pre-paid debit cards that were loaded with proceeds derived from filing false and fraudulent federal income tax returns in other persons' names, without those persons' permission or knowledge. Wilson and Larry filed these false and fraudulent federal income tax returns from multiple locations, including Wilson's residence and hotels in the Tampa area. Wilson, Larry, and others then used these fraudulently obtained tax refunds to make hundreds of thousands of dollars worth of retail purchases, to purchase money orders, and to withdraw cash. Larry was sentenced to 174 months in prison and ordered to forfeit $2,240,096.

Woman sentenced for running stolen identity tax fraud scheme. On July 30, 2013, in St. Louis, Missouri, Tania Henderson was sentenced to 144 months in prison and ordered to pay $835,883 in restitution to the IRS. Henderson pleaded guilty on April 29, 2013, to theft of government funds and aggravated identity theft. According to her plea agreement and other court documents, Henderson stole the identities of more than 400 individuals, many of whom were deceased, and filed fraudulent tax returns using their names and Social Security account numbers. Between August and November 2012, Henderson filed 236 fraudulent tax returns. Using a network of family and friends, she would collect refund checks or prepaid debit cards for the refund amounts and liquidate the proceeds of her scheme.

Leaders of multi-million dollar fraud ring sentenced. On May 8, 2012, in Montgomery, Alabama, Veronica Dale and Alchico Grant, who jointly ran a stolen identity refund fraud ring that attempted to defraud the United States of millions of dollars over several years, were sentenced to prison. Veronica Dale was sentenced to 334 months in prison and Alchico Grant was sentenced to 310 months in prison. Dale and Grant were both ordered to pay more than $2.8 million in restitution to the IRS. In September 2011, Grant pleaded guilty to five charges from two separate indictments, including conspiracy, wire fraud and aggravated identity theft. In October 2011, Dale pleaded guilty to seven charges from two indictments, including conspiracy, filing false claims, wire fraud and aggravated identity theft. According to court documents, beginning in 2009 and continuing through 2010, the defendants were part of a scheme that involved fraudulently obtaining tax refunds by filing false tax returns using stolen identities. Dale admitted that she filed more than 500 fraudulent returns that sought at least $3,741,908 in tax refunds. These returns were filed using the names of Medicaid beneficiaries, whose personal information Dale obtained while working for a company that serviced Medicaid programs. Dale directed the refunds to different bank accounts that she and other co-conspirators controlled.

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New Extension of Time for Portability Election

Cross References

- Rev. Proc. 2014-18
- IRC §2010(c)

Beginning January 1, 2011, estates of decedents survived by a spouse may elect to pass any of the decedent's unused estate tax exclusion to the surviving spouse. The surviving spouse can then use that amount along with his or her own exclusion amount against any tax liability from lifetime gifts and estate taxes.

Example: *Wanda died in January 2013. Her total assets were $1 million. Wanda's executor filed Form 706 electing to transfer her unused exclusion of $4.25 million ($5.25 million minus $1 million) to her surviving spouse, Ralph. Assume Ralph dies later in 2013. His estate exclusion amount for 2013 is $9.5 million ($5.25 million plus $4.25 million).*

Election. To make the portability election, the executor must file an estate tax return (Form 706) within nine months of the decedent's date of death, unless an extension of time for filing has been granted. This applies regardless of the size of the gross estate and regardless of whether the predeceased spouse otherwise is required to file an estate tax return. If no estate return is filed, the portability election is treated as not being made.

New simplified method for extension of time to make portability elections. Revenue Procedure 2014-18 provides a new simplified method for certain taxpayers to obtain an extension of time to make a portability election. The relief in part was issued to help taxpayers affected by the Supreme Court decision in *Windsor* and subsequent IRS guidance in Revenue Ruling 2013-17 in which same-sex couples legally married under state law are now treated as married for federal tax purposes. The simplified method applies only if:

1) The taxpayer is the executor of the estate of a decedent who:
   a) Has a surviving spouse,
   b) Died after December 31, 2010 and on or before December 31, 2013, and
   c) Was a citizen or resident of the U.S. on the date of death.
2) The taxpayer is not otherwise required to file an estate tax return because the deceased spouse had a gross estate below the filing requirements,
3) The taxpayer did not file an estate tax return within the time period required for making a portability election, and
4) The taxpayer follows the procedural requirements for relief under Revenue Procedure 2014-18.

Procedural requirements. If the above requirements are met, the executor can make the portability election by filing Form 706 on or before December 31, 2014. Write on the top of Form 706: *"This return is filed pursuant to Rev. Proc. 2014-18 to elect portability under §2010(c)(5)(A)."*

By following this procedure, the taxpayer is deemed to have met the filing deadline requirements for making a portability election. The taxpayer will receive an estate tax closing letter from the IRS acknowledging receipt of the taxpayer's Form 706. If it is later determined that the taxpayer was required to file an estate tax return for the decedent, based upon a re-evaluation of the decedent's gross estate and taxable gifts, the relief provided under Revenue Procedure 2014-18 will be deemed null and void.

Example: *Dave and Mike were legally married under the same-sex marriage laws of their state. Dave died in 2011 at a time when federal estate tax laws did not recognize their marriage. Dave's estate was valued below the filing requirement for filing Form 706 and so no estate return was filed (and thus no portability election was made). Under the new IRS guidance, Dave's executor has until December 31, 2014 to file Form 706 on behalf of Dave to make the portability election which passes Dave's unused estate tax exclusion amount over to Mike.*

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Employer Mandate to Offer Health Insurance Postponed…Again

Cross References

- IRC §4980H
- TD 9655

Under the Health Care Reform Act, a large employer with at least 50 full-time-equivalent employees is required to offer minimum essential health coverage to its full-time employees. If an employee is not offered minimum essential health coverage by the employer, the employee may be eligible for the premium assistance credit. The penalty for failure by an employer to offer minimum essential health coverage is one-twelfth of $3,000 per full-time employee per month in which the employee receives a premium tax credit or cost-sharing subsidy. The maximum penalty per employer is capped at an amount equal to the number of full-time employees during the month (regardless of how many employees are receiving a premium tax credit or cost-sharing subsidy) in excess of 30, multiplied by one-twelfth of $2,000.

Example: *ABC Corporation has 100 full-time employees, 20 of whom receive a premium tax credit for all 12 months during the year. ABC Corporation owes a total penalty of $60,000 [20 × (1/12 × $3,000) × 12]. The maximum penalty is capped at $140,000 [(1/12 × $2,000) × (100 – 30) × 12]. Since the calculated penalty of $60,000 for the year is less than the maximum penalty cap, ABC Corporation pays $60,000 for failing to offer 20 of its employees affordable minimum essential health coverage.*

First delay in rule. The U.S. Treasury announced in the summer of 2013 that it was delaying the January 1, 2014 beginning date requirement for employers until January 1, 2015.

Final regulations delay rule again. Final regulations issued on February 12, 2014 have delayed the rule once again until January 1, 2016 for employers with fewer than 100 full-time-equivalent employees (FTEs) (the January 1, 2015 start date still applies for employers with 100 or more FTEs).

The preamble to the final regulations explain that the application of IRC section 4980H will involve changes for applicable large employers that did not previously offer coverage, or that did not offer affordable, minimum value coverage. A large percentage of those employers are in the smaller size range, such as those with fewer than 100 FTEs. To assist these employers in transitioning into compliance, the transition relief described below is provided for all of 2015 (plus the portion of the 2015 plan year that falls into 2016 for fiscal year plans). If an employer meets the eligibility requirements under this transition relief, no penalty under IRC section 4980H will apply for 2015 (or the portion of the 2015 plan year that falls in 2016 for fiscal year plans).

All of the following conditions must apply for an applicable large employer to be eligible for this transition relief:

- The employer employs on average at least 50 FTEs but fewer than 100 FTEs on business days during 2014 (employers with fewer than 50 FTEs are not subject to IRC section 4980H).
- During the period beginning on February 9, 2014, and ending on December 31, 2014, the employer does not reduce the size of its workforce or the overall hours of service of its employees in order to satisfy the workforce size condition above. A reduction in workforce size or overall hours of service for bona fide business reasons is not considered to have been made in order to satisfy the workforce size condition. Examples of bona fide business reasons include the sale of a division, changes in the economic marketplace, terminations of employment for poor performance, or other similar changes that are not the result of trying to meet the workforce size condition for this transition relief.
- The employer does not eliminate or materially reduce the health coverage, if any, that it offered as of February 9, 2014.
- The employer certifies that it meets the eligibility requirements. Certification will be done by filing a prescribed form with the IRS (that is yet to be released).

Example: *As of February 9, 2014, ABC Corporation sponsors a group health plan with a calendar year plan year under which 40 of its full-time employees are offered coverage with an employer contribution of $300 per month for employee-only coverage. The offer of coverage is affordable with respect to some but not all of ABC Corporation's full-time employees. During the period from February 9, 2014, through December 31, 2014, two employees voluntarily terminate employment and ABC terminates three employees because of the non-renewal of a customer contract but does not otherwise reduce the size of its workforce or reduce any employee's hours of service. Had those five employees continued in employment throughout 2014, ABC would have had an average of 100 FTEs on business days in 2014. However, as a result of the terminations, it had an average of only 97 FTEs for business days in 2014. During the coverage maintenance period, ABC does not change the eligibility requirements for the group health plan (including not amending it to eliminate its existing health coverage for dependents) and continues to make an employer contribution of $300 per month toward the cost of employee-only coverage that provides minimum value. ABC files the appropriate form with the IRS certifying that it is eligible for the transition relief. As a result, ABC Corporation will not be subject to the penalty under IRC section 4980H for tax year 2015.*

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Chiropractor Arrested for Bribing IRS Auditor

Cross References

- U.S. Attorney's Office, District of Massachusetts Press Release, February 13, 2014

A Boston area chiropractor has been arrested for bribing an IRS auditor.

Stephen Jacobs was arrested for bribery of a public official. The complaint alleges that Jacobs paid an IRS auditor $5,000 in cash to ignore two deductions he improperly took on his 2011 income tax return.These deductions were in fact payments Jacobs made to two different women because he touched them inappropriately during medical treatments.

United States Attorney Carmen M. Ortiz and Robert O'Malley, Special Agent in Charge of the Treasury Inspector General for Tax Administration, made the announcement. The case is being prosecuted by Eugenia M. Carris of Ortiz's Public Corruption Unit.

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