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IDENTITY THEFT AND INCOME TAX PREPARATION FRAUD

HEARING

BEFORE THE

SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

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IDENTITY THEFT AND INCOME TAX PREPARATION FRAUD

THURSDAY, JUNE 28, 2012

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIME, TERRORISM,
AND HOMELAND SECURITY,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to call, at 9:48 a.m., in room 2141, Rayburn House Office Building, the Honorable Louie Gohmert (Vice-Chairman of the Subcommittee) presiding.

Present: Representatives Gohmert, Smith, Marino, Scott, Conyers, and Cohen.

Staff Present: (Majority) Caroline Lynch, Subcommittee Chief Counsel; Sarah Allen, Counsel; Lindsay Hamilton, Clerk; (Minority) Bobby Vassar, Subcommittee Chief Counsel; Joe Graupensberger, Counsel; Ashley McDonald, Counsel; and Veronica Eligan, Professional Staff Member.

Mr. GOHMERT. Thank you for being here today. This hearing of the Crime, Terrorism, and Homeland Security Subcommittee will come to order.

Today's hearing on identity theft and income tax preparation fraud is an important hearing. Especially like to welcome our witnesses. We appreciate your being here and look forward to your testimony.

Joined by my colleague from Virginia, the distinguished Ranking Member of the Subcommittee, Bobby Scott. We are also pleased to be joined by Ranking Member Conyers, the former Chairman of the Committee, and Chairman Lamar Smith should be here shortly. So, and when he comes, I understand he has an opening statement.

I have an opening statement, but because the Speaker has called a conference for 10:30 a.m., I don't want to run out of time and have left one of you to have to come back after a recess. So I will reserve my opening statement for later and proceed.

Ranking Member Mr. Scott, I understand, has a statement, and so we yield to Mr. Scott for his opening statement.

Mr. SCOTT. Thank you, Mr. Chairman.

And in light of your statement of the time, I will just thank you for calling the hearing. You will recall that Representatives Cohen, Rigell, and Thompson wrote in requesting a hearing, particularly as it pertains to Mo' Money Taxes.

We will hear from our witnesses about that, and I reserve the balance of my time. I will yield back the balance of my time.

Mr. GOHMERT. All right. Well, thank you, Mr. Scott. And we will certainly yield later after we hear from the witnesses.

Well, then at this time, Mr. Conyers, would you care to make an opening statement?

Mr. CONYERS. Yes, sir.

Mr. GOHMERT. I will yield to you.

Mr. CONYERS. And I will keep it brief in light of the custom of my Subcommittee Chairman and my distinguished Ranking Member.

But this is an important hearing. Identity theft and tax preparation fraud. Now this is bothering apparently a lot of people, and we are glad that all of you witnesses are here for it.

The message that is really getting my interest is the alert sent out by the Better Business Bureau of Western Michigan, a consumer alert about the national tax preparation company Mo' Money Taxes, of which there are plenty of offices in Detroit and the state of Michigan. Its home office is Memphis, Tennessee.

Consumers are complaining that their refunds were promised in January. Some of the Mo' Money offices are closed. Some don't answer their phones or return calls. Some blame the IRS. Mo' Money blames the IRS.

And so, I would like to hear a lot more about that, and I will put the rest of my statement in the record, Mr. Chairman, but note that identity fraud is a $37 billion cost in America, and we think that this is worthy of this hearing.

I commend my leaders on this Subcommittee for dealing with this problem and ask unanimous consent to put my statement into the record.

Mr. GOHMERT. Without objection, it will be so entered and appreciate the statement.

[The prepared statement of Mr. Conyers follows:]

Prepared Statement of the Honorable John Conyers, Jr., a Representative in Congress from the State of Michigan, Ranking Member, Committee on the Judiciary, and Member, Subcommittee on the Constitution

Thank you, Chairman, for this hearing on these important issues of identity theft and income tax preparation fraud. I would like to welcome all of today's witnesses, and especially Mr. Michael Robinson. I understand Mr. Robinson will testify today about his experience with the Mo Money tax company, and I want to express my appreciation for him joining us today.

Identity theft and income tax preparation fraud are serious problems. In assessing whether a legislative response is required, there are several issues we should consider.

To begin with, we must recognize that identity fraud is a costly problem that affects many Americans. For example, about 8.1 million Americans in 2010 were reportedly victims of identity fraud. The cost of this fraud was an astounding $37 billion. For one specific type of identity theft—tax fraud through identity theft—the IRS estimates that it paid as much as $5.2 billion in fraudulent returns in 2010.

In addition, identity fraud is not just a matter of money; it can ruin one's personal financial life in numerous respects.

Once perpetrators of identity fraud have someone's personal information, they can wreak havoc.

They can use the information to:

- obtain credit cards in the victim's name;
- establish bank accounts in the victim's name and write bad checks;
- take out a loan in the victim's name;

- obtain a driver's license or official ID card issued in the victim's name but with their picture;
- use the victim's name and Social Security number to get government benefits; and
- file a fraudulent tax return using the victim's information so that they can get the refund.

Victims of this crime often are forced to expend substantial time and money to address these problems.

Of equal concern is the fact that these identity theft perpetrators can sell personal information to other criminals, including terrorists, who seek to elude law enforcement detection efforts.

Most importantly, in addressing this serious crime, we must fashion a serious solution.

Our colleague, Representative Wasserman Schultz, introduced H.R. 4362, the "STOP Identity Theft Act of 2012."

This bill directs the Department of Justice to undertake a series of meaningful efforts. It requires the Department to pursue more prosecutions of tax return identity theft and expands the definition of victims of identity theft to include organizations in addition to individuals.

In addition, the bill requires the Department to report on the incidence of tax return identity theft and enforcement efforts.

All of these provisions of the bill would result in real improvements to the law.

I am concerned, however, that H.R. 4362 would also add tax fraud as a predicate for aggravated identity theft under section 1028A(c) of title 18 of the United States Code.

The penalty for aggravated identity theft is a mandatory term of imprisonment of two years or, for a terrorism offense, five years. H.R. 4362 therefore includes a mandatory minimum by adding a new crime (tax fraud) to a statute (aggravated identity theft) that already has a mandatory minimum.

As we have discussed in this committee many times, mandatory minimum sentencing laws require automatic prison terms for those convicted of certain crimes, without allowing the judge to take the facts and circumstances of the crime or the defendant in the particular case into account.

Identity theft crimes need stiff punishments, and even increased punishments, but mandatory sentences are problematic. I look forward to working with Ms. Wasserman Schultz and Chairman Smith to explore ways to combat identity theft without mandatory minimums.

I also plan to introduce a bill that will increase the statutory maximum for aggravated identity theft but delete the mandatory minimums currently included in section 1028A(c) of title 18 of the United States Code.

I look forward to discussing the problem of identity fraud at today's hearing and to explore ways to curtail this crime.

Mr. GOHMERT. And we have the Chairman of the full Committee, Chairman Smith. Recognize you for an opening statement.

Mr. SMITH. Thank you, Mr. Chairman.

In 2010, a couple from Fort Worth, Texas, lost their daughter a week after she was born. That year, when they filed their tax returns, they found that someone had profited from the death of their newborn baby by fraudulently claiming their deceased daughter as a dependent.

The following year, the same thing happened to some friends of the couple who also had lost a young child. In addition to dealing with their grief, these two families were forced to fight through the Federal tax system to set the record straight.

Unfortunately, the fraud committed against these two Texas families is not an isolated event. Tax fraud through identity theft is a rapidly growing problem in the United States. The number of these thefts has increased by approximately 300 percent every year since 2008. The Internal Revenue Service detected almost 1 million fake returns among the 2010 returns alone.

Tax thieves victimize innocent taxpayers in a number of ways. They often file fake returns under a false name or claim someone who is no longer alive as a dependent on their own forms. Often, the fraud is not detected until an individual files a legitimate tax return that is rejected by the IRS because a false return has already been filed and the refund paid.

Tax return identity theft is a very real problem. Congress should do all it can to protect citizens from this crime. I am an original cosponsor of H.R. 4362, the Stop Identity Theft Act of 2012, along with Congresswoman Debbie Wasserman Schultz. This is a bipartisan bill that strengthens criminal penalties for tax return identity thieves.

H.R. 4362 adds tax return fraud to the list of predicate offenses for aggravated identity theft and expands the definition of an identity theft victim to include businesses and charitable organizations. It also improves coordination between the Justice Department and State and local law enforcement officials in order to better protect groups that are most vulnerable to tax fraud so they are not future victims.

The changes to Federal law proposed by H.R. 4362 are important to keep pace with this ever-increasing crime. Tax identity theft cost American families and taxpayers millions of dollars each year. We can help reduce the number of people who are victimized by this crime.

So thank you, Mr. Chairman, and I thank the witnesses for being here as well and yield back the balance of my time.

Mr. GOHMERT. Thank you, Mr. Chairman.

At this time, it is my pleasure to introduce today's witnesses. First, we have Ms. Rebecca Sparkman, serves as Director of Operations, Policy, and Support in the Criminal Investigation Division of the Internal Revenue Service. Prior to this position, Ms. Sparkman served as special agent-in-charge of the IRS Washington, D.C., field office with the Criminal Investigation.

Ms. Sparkman began her IRS career in 1987 as a student trainee internal revenue agent and student trainee special agent in Riverside, California. She became a special agent in 1988 and has served several supervisory positions, including Deputy Director of Operations, special agent-in-charge of the Atlanta field office, executive assistant to the Chief of the Criminal Investigation Division, and counterterrorism coordinator to the Deputy Commissioner of Services and Enforcement.

Ms. Sparkman has most recently acted as the Director of Technology, Operations, and Investigative Services, and the Executive Director of the Investigative and Enforcement Operations for Criminal Investigation.

Ms. Sparkman holds a bachelor of science degree in accounting from California Baptist University.

At this time, Ms. Sparkman, we will recognize you for a statement, and please consider and understand that we will accept your full written statement as part of the record. But for purposes of these hearings, both Members and witnesses are restricted to 5 minutes for their statement, and you can watch the lights go from green to yellow to red to let you know time is up.

So thank you, Ms. Sparkman. We appreciate it.

TESTIMONY OF REBECCA SPARKMAN, DIRECTOR, OPERATIONS, POLICY, AND SUPPORT, CRIMINAL INVESTIGATION DIVISION, INTERNAL REVENUE SERVICE

Ms. SPARKMAN. Thank you.

Chairman Gohmert, Ranking Member Mr. Scott, Mr. Conyers, and Members of the Subcommittee, my name is Rebecca Sparkman, and I am the Director of Operations, Policy, and Support in the Criminal Investigation Division of the Internal Revenue Service. And I appreciate the opportunity to testify on the important issues of identity theft and return preparer fraud.

The work being done by the Criminal Investigation Division is a key component of the IRS's overall refund fraud strategy, which combats both identity theft and return preparer fraud. In these cases, there are at least two victims for each crime—the innocent person whose identity information is used to file a false return and the U.S. Treasury when the fraudulent refund goes out the door. Both are harmed, and both must work to rectify the situation.

The Criminal Investigation Division will more than double its investigative work on identity theft in 2012. We have already initiated 576 criminal cases, compared to 276 for all of last year, and we have obtained over 300 indictments, compared to 165 last year.

This past January, the IRS conducted a coordinated enforcement sweep related to identity theft in partnership with the Justice Department's Tax Division and local U.S. attorney's offices, which led to more than 900 criminal charges across 23 States. The Criminal Investigation Division continues to partner with Federal, State, and local law enforcement, including participation by our special agents throughout the country in task forces and working groups that target tax-related identity theft crimes.

About 60 percent of Americans use paid professionals to prepare and file their tax returns. Most return preparers provide honest service to their clients. But as in any other business, there are also some who prey on unsuspecting taxpayers.

Unfortunately, unscrupulous return preparers have been known to promise guaranteed or inflated refunds, skim off part or all of the refund, hijack returns, which takes personal information of former or potential clients and files false returns when the client did not intend to file a return. And they also conspire with others in identity theft schemes because they have access, and they are familiar with the IRS's filing systems.

Like our case work in identity theft, cases involving return preparer fraud by the Criminal Investigation Division in 2012 is on pace to increase from that of last year. While criminal investigations and the resulting prosecutions are critical to deterring tax crimes related to identity theft and return preparer fraud, it cannot totally prevent them from occurring.

The IRS must continually work to improve its processes and programs to detect and prevent these crimes. The harm that is inflicted by identity theft or return preparer fraud on innocent taxpayers is a problem that we take very seriously. The IRS has made several key improvements in a number of detection and prevention programs since 2011.

We have developed new screening filters to improve our ability to spot false returns. We implemented special identity protection

personal identification numbers, or PINs, for victimized taxpayers. We have launched a pilot program to aid local law enforcement in obtaining tax return data vital to their identity theft investigations.

We are collaborating with software developers, banks, and other industries to better detect fraud. We have improved outreach and case resolution to assist taxpayers who have been victimized. We have deployed a return preparer initiative requiring registration for paid return preparers, as well as competency testing and continuing education.

Overall, IRS programs identified and prevented the issuance of over $14 billion in fraudulent refunds in 2011, a subset of which includes identity theft and a portion of return preparer fraud.

Fighting refund fraud will be an ongoing battle for the IRS and one where we cannot afford to let up. The landscape is constantly changing as identity thieves continue to create new ways of stealing personal information to use it for illicit gain, and unscrupulous return preparers are constantly formulating new schemes to hide their fraud.

At the IRS, we will continue to review our processes and policies to ensure that we are doing everything possible to minimize the incidence of fraud, help those who find themselves victimized by it, and bring to justice those who perpetrate these crimes.

Mr. Chairman, I thank you for the opportunity to appear before the Subcommittee and describe the steps that the IRS is taking to combat identity theft and return preparer fraud, especially the work of the Criminal Investigation Division in these areas. And I would be happy to answer any questions.

Thank you.

[The prepared statement of Ms. Sparkman follows:]

Prepared Statement of Rebecca Sparkman, Director, Operations, Policy and Support, Criminal Investigation Division, Internal Revenue Service

INTRODUCTION AND SUMMARY

Chairman Sensenbrenner, Ranking Member Scott and Members of the Subcommittee on Crime, Terrorism and Homeland Security, my name is Rebecca Sparkman and I am the director of operations, policy and support in the Criminal Investigation division of the Internal Revenue Service. I appreciate the opportunity to testify on the important issue of identity theft and also discuss actions that the IRS is taking in the area of return preparer fraud.

Over the past few years, the IRS has seen a significant increase in refund fraud schemes in general and schemes involving identity theft in particular. Identity theft and the harm that it inflicts on innocent taxpayers is a problem that we take very seriously. The IRS has a comprehensive identity theft strategy comprised of a two-pronged effort, focusing both on fraud prevention and victim assistance.

Identity theft is the use of another person's identifying information stolen from a wide variety of places and through a wide variety of means. With respect to the IRS, identity theft manifests itself in several ways. First, it is used to defraud the government of funds through the filing of fraudulent refund claims. Second, in many instances it victimizes an innocent taxpayer by impeding his or her ability to get a refund from us. Fraudulent filings may also cause us to initiate an adverse enforcement action against the innocent taxpayer. There are also many instances where the identity stolen is not of an active filer so there is less immediate impact on the real taxpayer. In these instances, the identity may belong to a deceased individual or an individual without a filing requirement. In this category, the IRS is faced with fraud, but there is less immediacy in the need to assist the correct taxpayer because there is no return filed or other IRS activity underway with respect to that individual.

At the start let me say quite plainly that the IRS is confronted with the same challenges as every major financial institution in preventing and detecting identity theft. The IRS cannot stop all identity theft. However, we have improved and we are committed to continuing to improve our programs. We can and will continue to work to prevent the issuance of fraudulent refunds and we can and will continue to work with innocent taxpayers to clear their accounts and/or get them their money faster in a courteous and professional manner.

The IRS has also taken actions to be better prepared in both fraud prevention and victim assistance. On the prevention side, this means implementing new processes for handling returns, new filters to detect fraud, new initiatives to partner with stakeholders and a continued commitment to investigate the criminals who perpetrate these crimes.

The work being done by our Criminal Investigation division is a key component of our overall refund fraud and identity theft strategy. We have been increasing our investigations of fraud related to identity theft, and expanding our efforts to work with other divisions within the IRS as well as with local law enforcement and other federal agencies in this area.

As for victim assistance, the IRS is working to speed up case resolution, provide more training for our employees who assist victims of identity theft, and step up outreach to and education of taxpayers so they can prevent and resolve tax-related identity theft issues quickly.

The improvements that the IRS is making would not be possible without the additional resources that we have directed toward these programs. We have substantially increased our resources devoted to both prevention and assistance. Even in a declining budget environment, we are hiring and training additional staff to address the growing challenge of identity theft.

Fighting identity theft will be an ongoing battle for the IRS and one where we cannot afford to let up. The identity theft landscape is constantly changing, as identity thieves continue to create new ways of stealing personal information and using it for their gain. We at the IRS must continually review our processes and policies to ensure that we are doing everything possible to minimize the incidence of identity theft, to help those who find themselves victimized by it, and to investigate those who are committing the crimes.

And yet there is a delicate balance here. We cannot manually inspect 100 million refunds to ensure all are correct—nor is there any justification for doing so. That is neither practical nor in keeping with Congressional intent. The IRS has a dual mission when it comes to refunds, particularly when they are generated in whole or in part by tax credits. Refundable and other tax credits are provided to achieve important policy goals, such as relieving poverty, encouraging work, or boosting the economy. The IRS must deliver refunds in the intended time frame, while ensuring that appropriate controls are in place to minimize errors and fraud. We must balance the need to make payments in a timely manner with the need to ensure that claims are proper and taxpayer rights are protected.

So it is indeed a difficult challenge to strike the right balance. The IRS' approach to tackling identity theft must be multi-faceted. We are improving processes to prevent fraudulent filings from being processed as well as identifying promoters and other schemes. We are aggressively pursuing perpetrators of tax fraud from identity theft to bring them to justice. We are also taking actions to improve handling of identity theft cases and to better serve taxpayers whose identities have been stolen for tax purposes. All of this is being done within a very difficult budget environment. The Administration's FY 2013 Budget request includes important funding for additional enforcement initiatives focused specifically on addressing refund fraud, including identity theft. Let me walk through our work to prevent the fraud up front and how we hope to improve our service to the victims of identity theft.

PREVENTING FRAUD FROM IDENTITY THEFT

Tax filings can be affected by identity theft in various ways. For example, an identity thief steals a legitimate taxpayer's personal information in order to file a fake tax return and attempt to obtain a fraudulent refund. There are also instances where the identity stolen is of an individual who is deceased or has no filing requirement.

Overall, IRS identified and prevented the issuance of over $14 billion in fraudulent refunds in 2011. Identity theft is a subset of this overall refund fraud. From 2008 through May 2012, the IRS identified approximately 550,000 taxpayers who have been affected by identity theft. The IRS is committed to improving its approaches to blocking these fraudulent refund claims. To that end, we strive to proc-

ess returns in such a way that potentially false returns are screened out at the earliest possible stage.

Catching the Refund at the Door—Enhanced Return Processing

Identity theft is a key focus of an IRS program launched in 2011. Under this program, the following improvements have been made:

- Various new identity theft screening filters are in place to improve our ability to spot false returns before they are processed and before a refund is issued. For example, new filters were designed and launched that flag returns if certain changes in taxpayer circumstances are detected.
- Moreover, this filing season, we have expanded our work on several fraud filters which catch not only identity but other fraud. In this area we have already stopped more returns this filing season than we stopped all last calendar year.
- We have implemented new procedures for handling returns that we suspect were filed by identity thieves. Once a return has been flagged, we will correspond with the sender before continuing to process the return.
- We are issuing special identification numbers (Identity Protection Personal Identification Numbers or IP PINs) to taxpayers whose identities are known to have been stolen, to facilitate the filing of their returns and prevent others from utilizing their identities.
- We have accelerated the availability of information returns in order to identify mismatches earlier, further enhancing our ability to spot fraudulent tax returns before they are processed.
- We are leveraging mechanisms to stop the growing trend of fraudulent tax returns being filed under deceased taxpayers' identities. We are also working with the Social Security Administration in order to more timely utilize the information SSA makes available to us.
- We have also developed procedures for handling lists of taxpayers' personal information that law enforcement officials discover in the course of investigating identity theft schemes or other criminal activity. This is extremely valuable data that can be used to flag taxpayer accounts and help us block returns filed by identity thieves who have used the personal information of these taxpayers. The Criminal Investigation (CI) division will utilize this data to ensure linkages are identified between criminal schemes and will also ensure that the information is shared appropriately to affect victim account adjustment and protection activity.
- We expanded the use of our list of prisoners to better utilize the list to stop problematic returns. We have collaborated with the Bureau of Prisons for many years to help identify Federal prisoners who may be engaged in tax fraud, and we received additional help under the United States-Korea Free Trade Agreement Implementation Act passed in 2011 that requires federal and state prisons to provide information on the current prison population. Unfortunately, the authority allowing us to share return information with prisons expired at the end of 2011. The Administration's FY 2013 Budget proposal would reinstate the provision authorizing the IRS to disclose return information with respect to individuals incarcerated in Federal or State prisons whom the IRS determines may have filed or facilitated the filing of a false return.
- We are also collaborating with software developers, banks, and other industries to determine how we can better partner to prevent theft.

Stopping It Before It Starts—Criminal Investigation Work

The investigative work done by the Criminal Investigation (CI) division is a major component of our efforts to combat tax-related identity theft. CI investigates and detects tax fraud and other financial fraud, including fraud related to identity theft, and coordinates with other IRS divisions to ensure that false refunds involving identity theft are addressed quickly and that the IRS accounts of identity theft victims are marked to help prevent any future problems. CI recommends prosecution of refund fraud cases, including cases involving identity theft, to the Department of Justice.

CI works closely with the other IRS divisions to improve processes and procedures related to identity theft refund fraud prevention. For example, CI provides regular updates to the IRS' Wage and Investment division regarding emerging scheme trends so that processes and filters can be enhanced to prevent refund loss. These

collaborative efforts have been instrumental in helping the IRS stop more refund fraud.

In response to this growing threat to tax administration, CI established the Identity Theft Clearinghouse (ITC), a specialized unit that became operational in January, to work on identity theft leads. The ITC receives all refund fraud-related identity theft leads from IRS–CI field offices. The ITC's primary responsibility is to develop and refer identity theft schemes to the field offices, facilitate discussions between field offices with multi-jurisdictional issues, and provide support to on-going criminal investigations involving identity theft.

CI investigations of tax fraud related to identity theft have increased significantly over the past two fiscal years and the trend is continuing in FY 2012. In FY 2011, 276 investigations were initiated, compared with 224 in FY 2010 and 187 in FY 2009. CI recommended 218 cases for prosecution in 2011, compared with 147 the previous year and 91 in 2009. Indictments in identity-theft related cases totaled 165 in 2011, with 80 individuals' sentenced and average time to be served at 44 months. This compares with 94 indictments, 45 individuals sentenced and a 41 month average sentence in 2010.

Already in FY 2012—through May 31—CI has initiated 576 cases and recommended 342 cases for prosecution. Indictments in identity theft cases total 316, with 107 individuals sentenced and average time to be served at 49 months. The direct investigative time spent on identity theft in FY 2011 was 225,000 hours and CI is on pace to double this in FY 2012, as we have already reached 304,053 hours through the end of May.

The IRS conducted a coordinated identity theft enforcement sweep during the week of January 23. It was an outstanding success. Working with the Justice Department's Tax Division and local U.S. Attorneys' offices, the nationwide effort targeted 105 people in 23 states. The coast-to-coast effort that took place included indictments, arrests and the execution of search warrants involving the potential theft of thousands of identities. In all, 939 criminal charges are included in the 69 indictments and information related to identity theft.

In addition, in that same week IRS auditors and investigators conducted extensive compliance visits to check cashing businesses in nine locations across the country. The approximately 150 visits occurred to help ensure that these check-cashing facilities aren't facilitating refund fraud and identity theft.

These efforts send an unmistakable message to anyone considering participating in a refund fraud scheme that we are aggressively pursuing cases across the nation with the Justice Department, and people will be going to jail.

Identity theft has been designated as a priority in 2012. We also will be piloting dedicated cross-functional teams with other parts of the IRS that will allow us to create a greater footprint in one or more geographic locales.

Local law enforcement and other federal agencies play a critical role in combating identity theft. Thus, an important part of our effort to stop identity thieves involves partnering with law enforcement agencies. We collaborate on these issues and this effort will only increase going forward. It should be noted that the existing rules for protecting taxpayer privacy often make it difficult for us to provide easy access to information that may be useful for local law enforcement. Despite these difficulties, in April 2012 we implemented a new law enforcement assistance pilot program designed to aid law enforcement in obtaining tax return data vital to their local efforts in investigating and prosecuting specific cases of identity theft. The IRS will carefully assess the results and performance of the pilot program before deciding on how to proceed.

We will continue to search for other innovative ways to partner with local law enforcement. Furthermore, CI special agents throughout the country participate in at least 35 task forces and working groups with federal, state, and local law enforcement that target tax-related identity theft crimes. CI personnel also coordinate with these agencies in an effort to ensure that victims are aware of the steps they need to take to resolve their affected tax accounts. We will continue to develop new partnerships with law enforcement agencies.

Some of the recent successes involving identity theft include the following cases in which sentences were handed down in just the last couple of months:

- A Florida man was sentenced to 22 years in prison and ordered to pay approximately $3.5 million in restitution on charges that included wire fraud, making false statements against the U.S. and aggravated identity theft. This individual and four accomplices perpetrated a scheme in which taxpayers' identities were stolen from state databases and used to file hundreds of fraudulent tax returns. The four accomplices were sentenced to a total of 117 months in prison and ordered to pay restitution totaling more than $1.6 million.

- A South Carolina woman was sentenced to 75 months in prison and ordered to pay more than $289,000 in restitution after she was convicted on 18 counts of filing false, fictitious and fraudulent claims, and one count of aggravated identity theft. This individual, who operated a tax preparation service out of her home, filed false returns using identifying information stolen from a former employer, relatives, prisoners and others. She attempted to obtain approximately $437,000 in bogus refunds.
- Three Texas women were sentenced to a total of more than 70 months in prison for conspiring over a four-year period to steal taxpayer identities and use the information to file false returns and attempt to claim approximately $200,000 in bogus refunds. These individuals used their positions in Texas state agencies governing child support and low-income housing to steal the identities of agency clients and claim the false refunds.
- Two Alabama women were sentenced to 115 months in prison apiece and ordered to pay more than $500,000 in restitution for their involvement in a conspiracy to file false returns using stolen identities. One of these individuals operated a tax return preparation business and prepared the fraudulent returns, while the other gathered stolen personal information and also recruited customers, coaching them to provide false information in order to obtain the bogus refunds.
- Five Georgia men were sentenced to a total of more than 280 months in prison and ordered to pay a total of more than $3 million in restitution for participating in a scheme in which they prepared more than 150 false tax returns using the identifying information of prison inmates or persons living in their community.
- A Tennessee woman was sentenced to 168 months in prison, three years of supervised release, and ordered to pay more than $200,000 in restitution on charges that included aggravated identity theft, smuggling and mail fraud. This individual and an accomplice filed more than 500 false returns over a three-year period using stolen identifying information, and she attempted to collect more than $2 million in bogus refunds.
- A Montana man was sentenced to 33 months in prison, three years of supervised release, and ordered to pay more than $85,000 in restitution on charges of submitting false claims and identity theft. Over a two-year period this individual filed numerous fraudulent returns using information of deceased taxpayers, and he attempted to obtain more than $125,000 in bogus refunds.

ASSISTING TAXPAYERS VICTIMIZED BY IDENTITY THEFT

Along with prevention, the other key component of the IRS' efforts to combat identity theft involves providing assistance to taxpayers whose personal information has been stolen and used by a perpetrator in the tax filing process. This situation is complicated by the fact that identity theft victims' data has already been compromised outside the filing process by the time we detect and stop perpetrators from using their information.

We have taken a number of actions, including those described below, to restore the account of the innocent taxpayer. We have had difficulty keeping pace with the number of cases, but we are determined to bring to bear new resources and streamline existing processes. Thus, we have committed additional resources, even in this tough budget climate, trained our people, developed an IP PIN program, and expanded our external outreach.

Improving our work on Identity Theft Cases

We realize the importance of resolving cases involving identity theft quickly and efficiently so that identity theft victims who are owed their refunds can receive them as soon as possible and so that we do not take adverse enforcement actions against such individuals.

We are implementing new procedures designed to resolve cases faster and minimize the disruption to innocent taxpayers. For example, every division within the IRS is making identity theft cases a higher priority in their work. As indicated above, new procedures and additional staff are being put in place to work cases faster where a refund has been stopped. We increased staffing last year and this year, and have plans to dedicate additional resources following the filing season.

Along with taking steps toward faster resolution of identity theft cases, we are continuously improving the way we track and report on the status of all identity theft cases. We believe these improvements will reduce the time to work identity

theft cases in coming filing seasons so that honest taxpayers will receive their refunds sooner. Additionally, better tracking and reporting means that we can spot—and correct—any flaws in the system more quickly.

Identity Protection PIN Program

In addition to helping identity theft victims clear up problems with their IRS accounts, the IRS works proactively to help ensure that these taxpayers do not encounter delays in processing their future returns. In 2011, we launched a pilot program for Identity Protection Personal Identification Numbers (IP PIN). The IP PIN is a unique identifier that establishes that a particular taxpayer is the rightful filer of the return. The pilot program showed us that this is a very promising innovation that can dramatically reduce the number of taxpayers caught up in delays. Therefore, we have expanded the program for the new filing season, and have issued IP PINs to approximately 250,000 taxpayers who have suffered identity theft in the past.

Employee Training

The IRS runs one of the largest phone centers in the world, and is dedicated to providing quality service with a high degree of accuracy to every taxpayer who contacts us. Having said that, we realize that taxpayers who call the IRS with identity theft problems present unique challenges to our telephone representatives and we need to ensure taxpayers receive quality, courteous service.

Therefore, last year we conducted a thorough review of the training we provide our employees to make sure that they have the tools and sensitivity they need to respond in an appropriate manner to those who have been victimized by identity theft. As a result, we updated the training course for our telephone assistors to maintain the proper level of sensitivity when dealing with identity theft victims, and we broadened the scope of our training to include other IRS employees who interact with identity theft victims or work identity theft cases.

Taxpayer Outreach and Education

The IRS continues to undertake outreach initiatives to provide taxpayers, return preparers and other stakeholders with the information they need to prevent tax-related identity theft and, when identity theft does occur, to resolve issues as quickly and efficiently as possible. Recent actions in this area include the following: overhauling the identity protection training provided to tax practitioners at last year's Tax Forums; updating the identity theft information provided in the IRS.gov website; and continuing a far-reaching communications effort through traditional and social media in both English and Spanish, including producing new identity theft awareness videos for the IRS YouTube channel in English, Spanish and American Sign Language, and making identity theft the top item in this year's "Dirty Dozen" annual list of taxpayer scams.

RETURN PREPARER FRAUD

I would like to turn now to the subject of tax return preparer fraud and describe for you the efforts that the IRS has made in recent years to ensure a basic competency level for tax return preparers and focus our enforcement efforts on rooting out unscrupulous preparers.

The role of third party assistance in tax preparation in the U.S. has become increasingly important, particularly in light of growing tax law complexity and growing confusion among taxpayers over how to comply with the tax code and meet their responsibilities. Today, most federal individual income tax returns are prepared by paid return preparers or by taxpayers using consumer tax preparation software.

The IRS' Return Preparer Initiative

As the importance of the practitioner's role in tax preparation increased, the IRS determined that it was necessary to address a gap in oversight involving return preparers who are not certified public accountants (CPAs), enrolled agents (EAs) or attorneys. Our research suggested that our tax system and a large number of taxpayers may be poorly served by some return preparers who engage in fraud.

It was within this context that the IRS in 2009 launched its Return Preparer Initiative, one of the most important initiatives that the IRS has taken in recent years. This initiative has strengthened partnerships with tax practitioners who are already regulated and tested, while at the same time ensuring that all return preparers are serving taxpayers well.

In 2009, the IRS launched a six-month review focusing on the competency and conduct of paid return preparers. That review spawned a series of recommendations to extend oversight to certain areas of the preparer industry to enhance tax compli-

ance and service to taxpayers. The IRS began implementing these recommendations in 2010 and is now well into the process of putting in place the main components of the initiative, which include a registration requirement for preparers, and a competency test and continuing education requirement for preparers who are not CPAs, EAs or attorneys.

Criminal Investigations of Preparers

About 60 percent of taxpayers use tax professionals to prepare and file their tax returns. Most return preparers provide honest service to their clients. But as in any other business, there are also some who prey on unsuspecting taxpayers.

Unfortunately, some unscrupulous return preparers have been known to promise clients guaranteed or inflated refunds, skim off part or all of their clients' refunds, or charge inflated fees for return preparation services. Frequently, return preparer fraud involves the orchestrated preparation and filing of false income tax returns (in either paper or electronic form) which claim inflated personal or business expenses, false deductions, excessive exemptions, and/or unallowable credits that result in a refund. In many instances, the preparers' clients may not have knowledge of the false nature of the entries on their tax returns.

A new aspect of return preparer fraud is the highjacking of client returns—taking personal information of former or potential clients and filing falsified returns when the client did not intend for that preparer to submit a return. This may occur in instances where the client no longer has a filing requirement, has decided to retain a different return preparer or has met with a preparer to obtain an estimate for preparation of a return.

A second new aspect of this type of fraud is participation by return preparers in the identity theft schemes initiated by other third-parties. These individuals seek out unscrupulous return preparers due to their access to, and familiarity with, the IRS' filing systems. Identity thieves are continually searching for accomplices, either to create and file the fraudulent returns or to collect and convert the tax refunds into usable forms, i.e. cash or bank accounts they control. Willing return preparers that participate in identity theft schemes also offer an important incentive for identity thieves—the ability to commingle fraudulent returns with legitimate ones in order to make pattern recognition harder for IRS systems and personnel.

CI investigations of tax fraud related to return preparer fraud have increased significantly over the past two fiscal years and the trend is continuing in FY 2012. In FY 2011, 371 investigations were initiated, compared with 397 in FY 2010 and 224 in FY 2009. CI recommended 233 cases for prosecution in 2011, compared with 202 the previous year and 129 in 2009. Indictments in return preparer fraud related cases totaled 176 in 2011, with 163 individuals sentenced with an average time to be served at 25 months. This compares with 182 indictments, with 132 individuals sentenced and a 24-month average sentence in 2010. Already in FY 2012—through May 31—CI has initiated 317 cases and recommended 181 cases for prosecution. Indictments in return preparer fraud cases total 149, with 103 individuals sentenced and average time to be served at 30 months.

CONCLUSION

Mr. Chairman, thank you for the opportunity to appear before the Subcommittee and describe the steps that the IRS is taking to prevent identity theft and assist taxpayers who have been victims of this crime, and to discuss the actions we have been taking in the area of return preparer fraud. These two areas are major challenges for the IRS, and, while we have had some success of late, we are committed to improving our efforts in regard to both. The Criminal Investigation division has played and continues to play a key role in our efforts both on identity theft and return preparer fraud. We will continue to be aggressive in investigating fraud schemes perpetrated by identity thieves and unscrupulous preparers. We want to make certain that the message gets through that those participating in such schemes do so at their peril, because we will do everything we can to make sure that they are caught and sent to jail. I would be happy to answer any questions that you may have.

Mr. GOHMERT. Thank you so much, Ms. Sparkman. We appreciate that.

And there will be questions, but next, we will hear from Ms. Nina Olson is the head of the Taxpayer Advocate Service. Ms. Nina Olson serves as an advocate for taxpayers within the IRS. Prior to

her appointment as the national taxpayer advocate in January 2001, Ms. Olson maintained a private law practice, concentrating in tax controversy representation.

She was the founder and Executive Director of the Community Tax Law Project, the first independent low-income taxpayer clinic in the United States. From 1975 until 1991, she owned and operated Accounting, Tax, and Information Services, a tax planning and preparation firm in Chapel Hill, North Carolina.

Ms. Olson served as the chair of both the American Bar Association Section on Taxation and Low-Income Taxpayers Committee and the pro se, pro bono task force of the ABA Section of Taxation's Court Procedure Committee.

Ms. Olson graduated from Bryn Mawr College with an AB in fine arts. She received her J.D. from North Carolina Central School of law and her master's of law in taxation from the Georgetown University Law Center.

Ms. Olson has served as an adjunct professor at several law schools, and we are honored and proud to have you here, Ms. Olson. We would ask that you proceed with your 5 minutes of testimony.

TESTIMONY OF NINA E. OLSON, UNITED STATES TAXPAYER ADVOCATE, OFFICE OF THE TAXPAYER ADVOCATE, INTERNAL REVENUE SERVICE

Ms. OLSON. Thank you. Thank you for inviting me today to testify about tax-related identity theft and refund fraud.

Since 2004, I have written extensively about the impact of these crimes on taxpayers and tax administration, and I have worked closely with the IRS to improve its efforts to assist taxpayer victims. The IRS has adopted many of my office's recommendations and made significant progress in this area, but significant challenges also remain.

I will highlight five points that I think deserve particular emphasis. First, I am concerned that the Federal Government continues to facilitate tax-related identity theft by making public the Death Master File, a list of recently deceased individuals that includes their full name, Social Security number, date of birth, date of death, and the county, State, and zip code of the last address on record.

There is some uncertainty about whether the Social Security Administration has the legal authority to restrict public access to DMF records in light of the Freedom of Information Act. For that reason, I strongly support legislation to restrict public access to the DMF.

However, I believe the SSA has at least a reasonable basis for seeking to limit public access to the DMF, and if legislation is not enacted, I encourage the SSA to act on its own. The longer we delay, the more taxpayers are harmed.

Second, I am aware that some State and local law enforcement agencies would like access to tax return information to help them combat identity theft. I have significant concerns about loosening taxpayer privacy protections and believe this is an area where we need to tread carefully.

But as I describe in my written statement, the IRS is piloting a procedure that would enable taxpayers to consent to the release of their returns in appropriate circumstances to these agencies. In my view, giving taxpayers a choice strikes the appropriate balance.

Third, unscrupulous preparers sometimes alter taxpayers' returns by inflating income, deductions, credits, or withholding without their clients' knowledge or consent and pocket the difference between the revised refund amount and the amount expected by the taxpayer. The taxpayer learns about this fraud when the IRS contacts him or her to collect the improperly paid out refund amount.

Nine years ago, IRS chief counsel advised the IRS that it must remove the liability from the taxpayer victims' accounts. Yet as recently as January of this year, the IRS had no procedures to make the taxpayer whole. Only yesterday did the IRS issue partial interim guidance to its employees on this matter after I personally issued taxpayer assistance orders, taxpayer advocate directives to the highest levels of the organization, and covered the issue in the annual reports to Congress and in congressional testimony.

The taxpayers are the victims here, and the IRS has let them down for almost a decade. This is unacceptable.

Fourth, unscrupulous tax return preparers sometimes change the routing number on a taxpayer's return in an attempt to misappropriate the direct deposit refund. When this occurs, the IRS's position is that because it paid out the refund according to the instructions it received on the return, the taxpayer's sole recourse is to pursue the matter in a civil lawsuit against the return preparer.

But if the taxpayer had requested a paper refund check that was stolen, the Treasury Department could issue a replacement check after verifying the theft. I encourage Congress to modify the statute authorizing payments from the Check Forgery Insurance Fund to expressly include direct deposits and other electronic transactions.

That said, I don't think the IRS needs to wait for legislation before helping these tax fraud victims. In the case of a stolen direct deposit, the IRS chief counsel has advised that the service is legally permitted to reissue the refund to the taxpayer and that a return with tax data wrongfully altered by a preparer is not valid.

I do not think it is too much of a stretch for the IRS to treat a return with an account number wrongfully altered by a preparer as invalid.

Fifth, there is an inherent conflict between the need to protect the public fisc from refund fraud and taxpayers' expectation and need to receive their refunds quickly. We can either delay issuance of refunds until IRS has reviewed all 110 million refund returns, or we can accept that some dollars will be paid to persons committing refund fraud.

Alternatively, the IRS will need considerably larger staff to enable it to review questionable returns more quickly. There is no way around these tradeoffs.

Thank you for the opportunity to testify today.

[The prepared statement of Ms. Olson follows:]

WRITTEN STATEMENT OF

NINA E. OLSON

NATIONAL TAXPAYER ADVOCATE

HEARING ON

IDENTITY THEFT AND INCOME TAX PREPARATION FRAUD

BEFORE THE

SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

COMMITTEE ON THE JUDICIARY

U.S. HOUSE OF REPRESENTATIVES

JUNE 28, 2012

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Chairman Sensenbrenner, Ranking Member Scott, and distinguished Members of the subcommittee:

Thank you for inviting me to testify today about the subject of tax-related identity theft and refund fraud.[1] I have had the opportunity to address the impact of these subjects on taxpayers and to tax administration in three other congressional hearings this spring.[2] Just this week, I submitted my Fiscal Year 2013 Objectives Report to Congress, where I discuss identity theft and refund fraud and describe in detail what my office plans to do to address these concerns.[3]

My first of many experiences with identity theft occurred when I was the founder and Executive Director of The Community Tax Law Project (CTLP), the first independent nonprofit low income taxpayer clinic in the country.[4] CTLP provides pro bono legal representation to low income taxpayers throughout Virginia.[5] In 1993, a legally resident agricultural worker came to CTLP with Internal Revenue Service (IRS) assessments for additional tax purportedly attributable to unreported wages. My client and I spent the next four years proving to the IRS that it was impossible for him to be working and physically present at three different locations at the same instant. Because the identity thieves – several co-workers on one job from years before – continued to work under my client's name and Social Security number (SSN), we had to prove *each year* to the IRS that my client did not earn the unreported income. At that time, the IRS did not

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[1] The views expressed herein are solely those of the National Taxpayer Advocate. The National Taxpayer Advocate is appointed by the Secretary of the Treasury and reports to the Commissioner of Internal Revenue. However, the National Taxpayer Advocate presents an independent taxpayer perspective that does not necessarily reflect the position of the IRS, the Treasury Department, or the Office of Management and Budget. Congressional testimony requested from the National Taxpayer Advocate is not submitted to the IRS, the Treasury Department, or the Office of Management and Budget for prior approval. However, we have provided courtesy copies of this statement to both the IRS and the Treasury Department in advance of this hearing.

[2] *See Identity Theft and Tax Fraud*, Hearing Before the H. Comm. on Ways and Means, Subcomm. on Oversight and Social Security, 112th Cong. (May 8, 2012) (statement of Nina E. Olson, National Taxpayer Advocate); *Tax Compliance and Tax-Fraud Prevention*, Hearing Before the H. Comm. on Oversight and Government Reform, Subcomm. on Government Organization, Efficiency, and Financial Management, 112th Cong. (Apr. 19, 2012) (statement of Nina E. Olson, National Taxpayer Advocate); *Tax Fraud by Identity Theft Part 2: Status, Progress, and Potential Solutions*, Hearing Before the S. Comm. on Finance, Subcomm. on Fiscal Responsibility and Economic Growth, 112th Cong. (Mar. 20, 2012) (statement of Nina E. Olson, National Taxpayer Advocate).

[3] *See* National Taxpayer Advocate Fiscal Year 2013 Objectives Report to Congress, at http://www.taxpayeradvocate.irs.gov//userfiles/file/FY13ObjectivesReporttoCongress.pdf.

[4] *See generally* Internal Revenue Code (IRC) § 7526. The Low Income Taxpayer Clinic (LITC) program serves individuals whose incomes are below a certain level and require assistance in dealing with the IRS. LITCs are independent from the IRS and most LITCs can provide representation before the IRS or in court on audits, tax collection disputes, and other issues for free or for a nominal fee. IRC § 7526 authorizes the IRS to award matching grants of up to $100,000 per year to qualifying clinics that represent low income taxpayers involved in controversies with the IRS, or that provide education and outreach on the rights and responsibilities of U.S. taxpayers who speak English as a second language.

[5] *See* www.ctlp.org.

have any system to flag my client's account and avoid tormenting and burdening him each year. Somehow, the fact that my client was the victim did not make any impression on the IRS.

My experiences as a tax lawyer representing clients in identity theft and other cases have served as a guide in my role as the National Taxpayer Advocate, the "voice of the taxpayer" inside the IRS. The Taxpayer Advocate Service (TAS) is unique in the IRS in that we work with our taxpayers' cases from beginning to end. We are also charged, by statute, to make administrative and legislative recommendations to mitigate the problems taxpayers experience with the IRS.[6] As a result, many TAS employees have developed expertise in identity theft and refund fraud-related issues over the years.

To its credit, the IRS has adopted many of my office's recommendations to help victims of identity theft and refund fraud. Certainly, refund-driven tax fraud is not a problem the IRS can fully solve, but I believe that the IRS can do much more to detect questionable returns and assist victims of identity theft or return preparer fraud.

In my testimony today, I will make the following points:

1. When analyzing the impact of refund fraud, a broad perspective is necessary.
2. The IRS and TAS continue to see unprecedented levels of identity theft casework.
3. The IRS should take steps to limit the opportunities for refund fraud, while not unreasonably delaying legitimate refund claims.
4. The IRS has been slow to develop procedures to assist victims of return preparer fraud.
5. The IRS should develop procedures to replace stolen direct deposit refunds.
6. TAS works closely with the Criminal Investigation division to ensure that identity theft victims receive the attention and assistance they require.
7. The Social Security Administration should restrict access to the Death Master File.
8. Creating new exceptions to taxpayer privacy protections poses risks and should be approached carefully, if at all.
9. There is a continuing need for the IRS's identity protection specialized unit to play a centralized role in managing identity theft cases.

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[6] *See* IRC § 7803(c)(2).

I. When Analyzing the Impact of Refund Fraud, a Broad Perspective Is Necessary.

Tax-related identity theft, refund fraud, and return preparer fraud all have one common theme – the perpetrator is using the tax system to obtain improper refunds. The growth of spending programs that are run through the tax code, as well as overwithholding of income taxes, result in large IRS payments to taxpayers and have made refund fraud more alluring. The IRS has had difficulty verifying the legitimacy of claims for recently-enacted tax benefits such as the Economic Stimulus Payment, First-Time Homebuyer Credit, Work Opportunity Credit, and Making Work Pay Credit. This difficulty, combined with a reduction in IRS funding, has made the IRS's job much harder.

I want to take a moment to put into perspective the IRS's overall mission and the challenges and trade-offs that addressing tax-related identity theft presents. As the nation's tax collection agency, the IRS is responsible for processing over 145 million individual income tax returns annually, including more than 109 million requests for refunds.[7] In 2011, the average refund amount was approximately $2,913, representing a significant lump-sum payment for taxpayers with incomes below the median adjusted gross income of $31,494 for individual taxpayers.[8] At the same time the IRS is being urged to do more to combat refund fraud, taxpayers are clamoring for the IRS to process returns and issue refunds faster. While there is room for the IRS to make marginal improvements in both areas, the two goals are fundamentally at odds. The dual tasks of fraud prevention and timely return processing present challenges in simple tax systems, and ours is far from simple.

In fiscal year (FY) 2011, the IRS's Electronic Fraud Detection System (EFDS) selected over one million questionable returns for screening.[9] While it is important for the IRS to further scrutinize the one million questionable returns, we should not lose sight of the fact that the IRS also has a duty to the other 144 million individual taxpayers in this country. Taxpayers have become accustomed to filing their returns shortly after they receive their Forms W-2 or Forms 1099 (reporting wages and interest, respectively, and available to taxpayers by January 31). Approximately 77 percent of U.S. taxpayers file electronically, meaning the IRS can process most refund requests within a week or two

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[7] In calendar year 2011, the IRS processed 145,320,000 individual tax returns, with 109,337,000 requests for refunds. IRS, *Filing Season Statistics – Dec. 31, 2011*, *at* http://www.irs.gov/newsroom/article/0,,id=252176,00.html (last visited Mar. 12, 2012).

[8] IRS, *Filing Season Statistics – Dec. 31, 2011*, *at* http://www.irs.gov/newsroom/article/0,,id=252176,00.html (last visited Mar. 12, 2012); Compliance Data Warehouse, Individual Returns Transaction File for CY 2011.

[9] The volume of returns selected to be screened rose from 611,845 in CY 2010 to 1,054,704 in CY 2011 (through Oct. 15, 2011), a 72 percent increase. *See* National Taxpayer Advocate 2011 Annual Report to Congress 28.

of filing.[10] With the introduction of e-filing, combined with the increasing number of refundable credits run through the tax code, our tax system has shifted, for better or worse, to one of instant gratification.

The benefit of enjoying such a tax system is somewhat offset by the increased ability of perpetrators to defraud the government. While the IRS seeks to implement automated filters to screen out as many suspicious refund claims as possible, it is unrealistic to expect the IRS to detect and deny all such claims. Because the fraud detection algorithms are constantly evolving in response to new patterns, there will always be a lag in the filters.

If we wanted to be absolutely certain that no improper refunds are paid out to identity thieves or other individuals filing bogus returns, we could keep the April 15 filing deadline but push the date for issuing refunds several weeks into the summer, after the return filing due date, as some other tax systems do. Such a shift would allow the IRS sufficient time to review every suspicious return. More importantly, the IRS would have at its disposal nearly the full arsenal of information reporting databases – including complete data on wages and withholding, interest income, dividends, and capital gains – and could better detect and resolve discrepancies and questionable returns *before* issuing refunds.

I recognize that this would be a significant shift and it would take considerable effort to change a culture in which taxpayers have become accustomed to receiving their refunds within a week or two of filing their returns electronically. Delaying the delivery of a $3,000 refund to a family that is relying on these funds to meet basic living expenses may inflict severe financial hardships. Many taxpayers have grown accustomed to the existing cycle and make financial decisions based on the assumption they will receive their refunds in February or March.

Alternatively, if we prefer not to delay the processing of refunds but still insist on greater fraud detection than the IRS can now manage, then Congress must authorize significantly more funding for the IRS so it can expeditiously work cases where returns and associated refunds have been flagged but may be legitimate. In my 2011 Annual Report, I noted that while questionable returns selected by EFDS increased by 72 percent, the staffing of the IRS unit conducting the manual wage and withholding verification grew by less than nine percent.[11] It is unrealistic to expect the IRS to keep up with its increasing workload without either allocating a corresponding increase in resources or extending the timeframe for the necessary wage and withholding verification. Without a fundamental shift in tax administration, honest taxpayers will continue to be harmed and overall taxpayer service and compliance will suffer as the IRS moves resources from other activities to combat fraud and identity theft.

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[10] IRS, *IRS e-file Launches Today; Most Taxpayers Can File Immediately*, IR-2012-7 (Jan. 17, 2012).

[11] The Accounts Management Taxpayer Assurance Program (AMTAP) staff increased from 336 in FY 2010 to 366 in FY 2011, a gain of nearly nine percent. *See* National Taxpayer Advocate 2011 Annual Report to Congress 29.

II. The IRS and TAS Continue to See Unprecedented Levels of Identity Theft and Refund Fraud Casework.

As I have written in my Annual Reports to Congress since 2004, tax-related identity theft is a serious problem – for its victims, for the IRS and, when Treasury funds are improperly paid to the perpetrators, for all taxpayers.[12] In general, tax-related identity theft occurs when an individual intentionally uses the SSN of another person to file a false tax return with the intention of obtaining an unauthorized refund.[13] Identity theft wreaks havoc on our tax system in many ways. Victims not only must deal with the aftermath of an emotionally draining crime, but may also have to deal with the IRS for years to untangle the resulting tax account problems. Identity theft also impacts the public fisc, as Treasury funds are diverted to pay out improper refunds claimed by opportunistic perpetrators. In addition, identity theft takes a significant toll on the IRS, tying up limited resources that could otherwise go toward improving taxpayer service or compliance initiatives.

Today, identity theft can be an organized, large-scale operation. The most recent IRS data show more than 660,000 identity theft cases in inventory servicewide.[14] The Identity Protection Specialized Unit (IPSU), the centralized IRS organization established in 2008 to assist identity theft victims, is experiencing unprecedented levels of case receipts.[15] As this chart shows, IPSU receipts have increased substantially over the two previous years.

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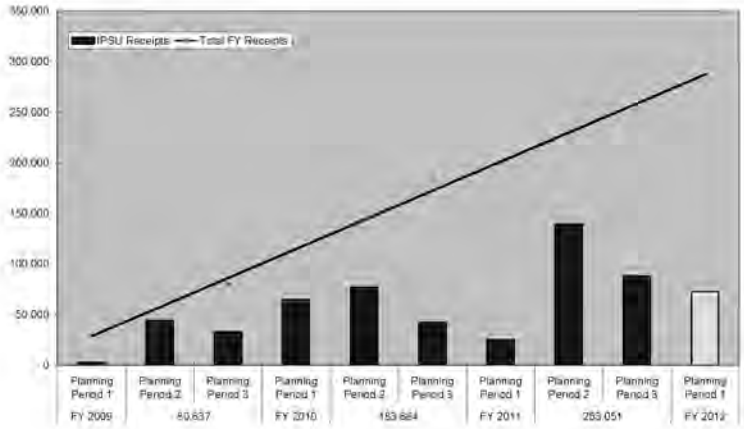
[12] *See* National Taxpayer Advocate 2011 Annual Report to Congress 48-73 (Most Serious Problem: *Tax-Related Identity Theft Continues to Impose Significant Burdens on Taxpayers and the IRS*); National Taxpayer Advocate 2009 Annual Report to Congress 307-317 (Status Update: *IRS's Identity Theft Procedures Require Fine-Tuning*); National Taxpayer Advocate 2008 Annual Report to Congress 79-94 (Most Serious Problem: *IRS Process Improvements to Assist Victims of Identity Theft*); National Taxpayer Advocate 2007 Annual Report to Congress 96-115 (Most Serious Problem: *Identity Theft Procedures*); National Taxpayer Advocate 2005 Annual Report to Congress 180-191 (Most Serious Problem: *Identity Theft*); National Taxpayer Advocate 2004 Annual Report to Congress 133-136 (Most Serious Problem: *Inconsistence Campus Procedures*).

[13] We refer to this type of tax-related identity theft as "refund-related" identity theft. In "employment-related" identity theft, an individual files a tax return using his or her own taxpayer identifying number (usually an Individual Taxpayer Identification Number or ITIN), but uses another individual's SSN in order to obtain employment, and consequently, the wages are reported to the IRS under the SSN. Unlike in 1993, when I first represented a client in an identity theft case, the IRS now has procedures in place to minimize the tax administration impact to the victim in these employment-related identity theft situations. Accordingly, I will focus on refund-related identity theft in this testimony.

[14] IRS, Identity Theft Advisory Council, *Identity Theft Status Update* 14 (June 19, 2012).

[15] With the IRS moving to a specialized approach to assisting identity theft victims, it is unclear what role the IPSU will play in the future. The National Taxpayer Advocate believes it is important for the IPSU to continue to serve as the "traffic cop" and serving as the single point of contact with the identity theft victim, as discussed later in this testimony.

Figure 1, IPSU Paper Inventory Receipts, FY 2009 to FY 2012 by Planning Period (and FY Totals)[16]



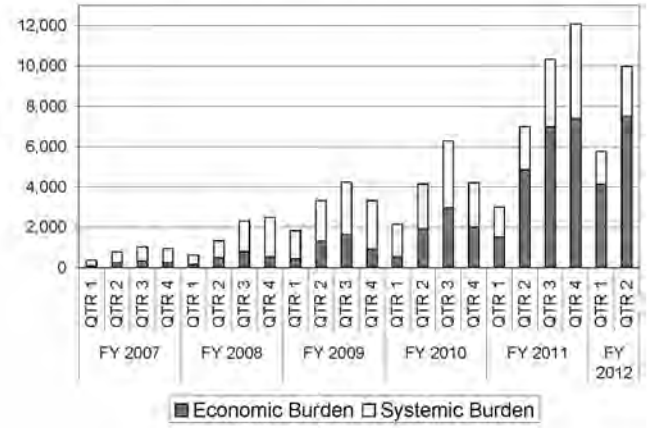
The Taxpayer Advocate Service has experienced a similar surge in cases, as TAS identity theft receipts rose 93 percent in FY 2011 over FY 2010. The upward trend continued in the first two quarters of FY 2012, when TAS received nearly 16,000 identity theft cases, a 57 percent increase over the same period in FY 2011.[17] The growth in casework reflects both the increase in identity theft incidents and the IRS's inability to address the victims' tax issues promptly.

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[16] Data obtained from IRS Identity Protection Specialized Unit (Mar. 13, 2012). The IPSU tracks cases by "planning period." Planning Period 1 covers Oct. 1 to Dec. 31, Planning Period 2 covers Jan. 1 to June 30, and Planning Period 3 covers July 1 to Sept. 30. The trend line shows total cases from each FY (not including FY 2012, where we have partial-year data).

[17] There were over 10,000 identity theft cases in TAS during the same period in FY 2011. Data obtained from the Taxpayer Advocate Management Information System (TAMIS) (Apr. 1, 2012; Apr. 1, 2011).

Figure 2, Identify Theft Cases Received Quarterly in TAS, FY 2007 through FY 2011 and Second Quarter of FY 2012[18]



The Accounts Management Taxpayer Assurance Program (AMTAP) selects questionable returns for screening through the EFDS to verify the accuracy of taxpayers' wages and withholding before releasing refunds. As shown below, the number of returns meeting AMTAP criteria has increased 120 percent in FY 2012 (through May 10th) over the same period in FY 2011.

Figure 3, Number of Tax Returns Meeting AMTAP Criteria and TAS Pre-Refund Wage Verification Hold Case Receipts, FY 2011 and FY 2012

	FY 2011	FY 2012	Percent Increase
Number of IRS returns meeting AMTAP criteria through May 10, 2012[19]	572,881	1,260,550	120%
Number of TAS Pre-Refund Wage Verification Hold Case Receipts, through Apr. 30, 2012[20]	4,783	8,059	68.5%

[18] Data obtained from TAMIS. TAS retrieved the data on the first day of the month following the end of each quarter for FY 2007 through second quarter of FY 2012.

[19] EFDS Production Filing Season 2012 Statistics (May 10, 2012).

[20] TAMIS (May 1, 2012).

III. The IRS Should Take Steps to Limit the Opportunities for Refund Fraud, While Not Unreasonably Delaying Legitimate Refund Claims

To better protect the public fisc from a surge of new refund schemes, the IRS has expanded its use of sophisticated fraud detection models based on data mining to filter ou questionable refund claims. The IRS estimates that EFDS has an 89 percent accuracy rate – which means the system may still catch upwards of 100,000 legitimate taxpayers.[21] While the IRS can try to screen out as many suspicious refund claims as possible, it is unrealistic to expect the IRS to detect and stop all such claims given its resource and time constraints.

I continue to support the IRS's increased use of data mining and automated screens to identify suspicious refund claims, and commend the IRS's efforts to use every tool at its disposal to combat refund fraud. However, I have cautioned the IRS to not lose sight of th fact that no matter how well-developed a particular filter is, it will inevitably affect legitimate taxpayers. As the IRS creates these filters, it must also create procedures that would allo honest taxpayers to receive their legitimate refunds without unnecessary delay.

For example, if EFDS cannot initially verify wage and withholding information, the IRS applies a "soft freeze" (*i.e.*, the refund will be released systemically) on the account while its employees begin a manual verification process[22] that can take up to 11 weeks.[23] In many cases, the IRS cannot verify the information within this time. Rather than releasing the refunds, the IRS places permanent freezes on these accounts while the wage verification is completed. I am concerned that once a case is placed in a "hard freeze" (*i.e.*, the refund must be manually released), it will lose its urgency in being worked and will languish for weeks, for months, or even indefinitely.[24] Instead of applying hard freezes to these unworked cases, I have advocated that the IRS develop

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[21] National Taxpayer Advocate 2011 Annual Report to Congress 28. We have not been able to independently verify this accuracy rate.

[22] This includes contacting the taxpayer's employer or if directed by the employer, the payroll processing firm to verify wages and withholding. AMTAP employees will also perform research to ensure they have the employer's current address.

[23] Internal Revenue Manual (IRM) 21.9.1.2.3(1) (Mar. 7, 2011).

[24] For an example of how "questionable" refunds can languish in a "hard freeze" state for months and even years, see National Taxpayer Advocate 2005 Annual Report to Congress 25 (Most Serious Problem: *Criminal Investigation Refund Freezes*) and National Taxpayer Advocate 2005 Annual Report to Congress vol. 2 (*Criminal Investigation Refund Freeze Study*). *See also* National Taxpayer Advocate 2006 Annual Report to Congress 408 (Status Update: *Major Improvements in the Questionable Refund Program and Some Continuing Concerns*). Following a 400 percent increase in TAS cases originating from CI, TAS conducted a research study that found that 80 percent of taxpayers in a statistically representative sample of TAS cases had received at least a partial refund (66 percent had received a full refund) and that taxpayers had to wait about nine months, on average, to receive these refunds. As part of the study, TAS learned that well over 200,000 taxpayers with frozen refunds never received any notice of CI's actions, and CI had taken no action to resolve those disputed refund claims.

the ability to temporarily extend the soft freeze period. Only those returns that have been verified as not legitimate should be placed in a hard freeze.

IV. The IRS Has Been Slow to Develop Procedures to Assist Victims of Return Preparer Fraud

Taxpayers are increasingly becoming victimized by their own tax return preparers. TAS has received a significant number of cases involving preparer refund fraud.[25] Unscrupulous preparers sometimes alter taxpayers' returns by inflating income, deductions, credits, or withholding without their clients' knowledge or consent, and pocket the difference between the revised refund amount and the amount expected by the taxpayer. Here is how a return preparer could commit fraud without the taxpayer's knowledge:

- Provide a copy of the legitimate tax return to the taxpayer.
- Without the taxpayer's knowledge, alter the return to reflect additional withholding, credits, or deductions, resulting in an increased refund.
- File the altered return with the IRS.
- Request that the refund be split among two bank accounts – with the correct amount going to the taxpayer and the inflated portion of the refund going directly into the return preparer's bank account.

In such cases, the taxpayer has a copy of the legitimate return and receives the refund he or she was expecting; there is no reason for the taxpayer to suspect the return preparer had committed fraud. It is only when the IRS ultimately discovers that the taxpayer's return is incorrect and attempts to recover the excess refund from the taxpayer through levies, liens, and other enforcement actions that the taxpayer learns of the return preparer fraud.

One high-profile investigation of a tax return preparation firm has resulted in many TAS cases. On March 14, 2012, the Illinois Attorney General's office sued Mo' Money Taxes, a tax preparation service and lender based in Memphis, Tennessee.[26] The suit accuses the company of filing unauthorized federal income tax returns and charging undisclosed and exorbitant fees for tax preparation services. The Attorney General alleged the returns were riddled with errors and the company failed to provide some customers with their promised refund checks. The Attorney General's office contacted my office for assistance, and we agreed to take the following steps:

- Provide information to alleged victims about seeking assistance from the IRS;
- Ensure the IRS was aware that taxpayers would need assistance; and

[25] Through June 23, 2012, TAS has received 296 return preparer fraud cases in FY 2012. Data obtained from TAMIS.

[26] Illinois Attorney General, Madigan Sues National Tax Preparer Mo' Money, Lawsuit Highlights Need to Crack Down on High Costs, Fees of Refund Anticipation Loans (Mar. 14, 2012), *available at* http://illinoisattorneygeneral.gov/pressroom/2012_03/20120314.html.

- Coordinate actions such as holds on collection activity on the taxpayers' accounts.

To date, TAS has received 76 inquiries related to Mo' Money issues, all of which resulted new TAS cases. We are able to provide some form of relief to the taxpayer in 56.6 percer of the closed cases.[27]

I issued interim guidance to TAS Case Advocates on recognizing refund theft by preparers and advocating for the taxpayers.[28] However, I am disappointed in the IRS's apparent inability to develop similar procedures to assist victims of return preparer fraud. The IRS has failed to unwind the harm done to these taxpayers – even when it had plenty of time to establish procedures. Recently, in response to continued delays by the Wage and Investment division (W&I) in developing such procedures, I instructed my employees to elevate all cases involving return preparer fraud adjustments to their Local Taxpayer Advocates (LTAs), who will issue Taxpayer Assistance Orders (TAOs)[29] rather than first submit the request to adjust the case through our normal channels.[30]

In one egregious instance involving several returns prepared by the same preparer – and despite the IRS's concurrence that the returns it processed were not the returns signed by the taxpayers – the IRS refused to adjust the taxpayers' accounts to remove the fabricated income or credits because it did not have procedures in place to do so. In these cases, the LTA issued TAOs to the IRS in December 2010. After the IRS refused to comply, I elevated these TAOs to the Commissioner of W&I in July 2011. After receiving no response, I further elevated the TAOs in August 2011 to the Deputy Commissioner for Services and Enforcement, who agreed that the IRS needed to correct the victims' accounts. It was not until the end of March 2012 that the IRS finally made the adjustments – over 18 months after the taxpayers first came to TAS for help.

The IRS response to these cases is particularly disturbing because the IRS has been aware of the issue of unscrupulous preparers altering returns in this manner for at least eight years. In March 2003, the Refund Crimes section of the IRS's Criminal Investigation (CI) division identified a scheme in which a preparer had altered several hundred of his clients' returns without their knowledge to increase each refund and then diverted the excess refunds into his own bank account. CI sought advice from the IRS Office of Chief Counsel, which issued an opinion concluding that a return altered by a

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[27] Data obtained from TAMIS (June 17, 2012).

[28] *See* TAS Interim Guidance Memorandum TAS-13-0212-008, *Interim Guidance on Advocating for Taxpayers When a Return Preparer Appears to Have Committed Fraud* (Feb. 7, 2012), *available at* http://www.irs.gov/pub/foia/ig/tas/tas-13-0212-008.pdf.

[29] Internal Revenue Code (IRC) § 7811 authorizes the National Taxpayer Advocate to "issue a Taxpayer Assistance Order upon a determination that a taxpayer is suffering or about to suffer a significant hardship as a result of the manner in which the internal revenue laws are being administered by the Secretary." *See* IRC § 7811(a)(1).

[30] *See* IGM TAS-13-0512-017, *Interim Guidance for Preparing Taxpayer Assistance Orders (TAOs) Involving Return Preparer Fraud* (May 22, 2012), http://www.irs.gov/pub/foia/ig/tas/tas-13-0512-017.pdf.

tax return preparer *after* the taxpayer has verified the accuracy of the return is a nullity (*i.e.*, not a valid return).[31] Counsel also advised that the taxpayer's account should be corrected by having the taxpayer file an accurate return and then adjusting the account to reflect the correct information reported on that return.[32] The Office of Chief Counsel issued an additional opinion in 2008, concluding that the IRS *can and should* adjust each taxpayer's account to remove any entries attributable to the invalid return filed by the preparer.[33] And in 2011, shortly after I issued a Proposed Taxpayer Advocate Directive (TAD) (discussed below), Counsel reaffirmed the conclusion that such altered returns were not valid.[34]

Because this was a systemic issue that required guidance to W&I employees, I issued a Proposed TAD to the Commissioner of W&I on June 13, 2011.[35] This Proposed TAD directed W&I to establish procedures for adjusting the taxpayer accounts in instances where a tax return preparer alters the return without the taxpayer's knowledge or consent in order to obtain a fraudulent refund. After receiving an unsatisfactory response to concerns raised about this matter in the Proposed TAD and my 2011 Annual Report to Congress,[36] I issued a TAD to the W&I and Small Business/Self-Employed (SB/SE) Operating Division Commissioners on January 12, 2012.[37] This TAD included suggestions for how the IRS could unwind the victims' accounts. While both officials have acknowledged their intent to comply with the substance of the TAD, they appealed the TAD solely in an effort to extend the time allowed to comply with the actions, *notwithstanding that the IRS already had over eight years to develop procedures to assist these victims of fraud.*

My staff is currently working with the IRS to develop procedures to address return preparer fraud. But frankly, I find it unacceptable that the IRS needs to be constantly

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[31] *See* IRS Office of Chief Counsel Memorandum, *Horse's Tax Service*, PMTA 2011-13 (May 12, 2003), *available at* http://www.irs.gov/pub/lanoa/pmta-2011-013.pdf. A copy of this memorandum is attached.

[32] *See* IRS Office of Chief Counsel Memorandum, *Horse's Tax Service*, PMTA 2011-13 (May 12, 2003), *available at* http://www.irs.gov/pub/lanoa/pmta-2011-013.pdf.

[33] IRS Office of Chief Counsel Memorandum, *Refunds Improperly Directed to a Preparer*, POSTN-145098-08 (Dec. 17, 2008).

[34] IRS Office of Chief Counsel Memorandum, *Tax Return Preparer's Alteration of a Return*, PMTA 2011-20 (June 27, 2011).

[35] Pursuant to Delegation Order No. 13-3, the National Taxpayer Advocate has the authority to issue a TAD "to mandate administrative or procedural changes to improve the operation of a functional process or to grant relief to groups of taxpayers (or all taxpayers) when implementation will protect the rights of taxpayers, prevent undue burden, ensure equitable treatment, or provide an essential service to taxpayers." IRM 1.2.50.4, Delegation Order 13-3 (formerly DO-250, Rev. 1), *Authority to Issue Taxpayer Advocate Directives* (Jan. 17, 2001). *See also* IRM 13.2.1.6, *Taxpayer Advocate Directives* (July 16, 2009).

[36] *See* National Taxpayer Advocate 2011 Annual Report to Congress 59-60.

[37] *See* Taxpayer Advocate Directive 2012-1 (*Establish procedures for adjusting the taxpayer's account in instances where a tax return preparer altered the return without the taxpayer's knowledge or consent, and the preparer obtained a fraudulent refund*) (Jan. 12, 2012).

nudged to develop guidance for its employees about a type of return preparer fraud that it has known about for more than eight years, is growing, and is potentially very harmful to the impacted taxpayers. The taxpayers are the victims here, and the IRS should act with all due haste to correct their accounts and eliminate the risk of unlawful collection. Between Taxpayer Assistance Orders, Taxpayer Advocate Directives, the Annual Report to Congress, and now today's testimony, I am using every tool in my toolbox to try to get the IRS to help these victims of tax fraud. It is astonishing to me that it has taken the IRS this long to act.

V. The IRS Should Develop Procedures to Replace Stolen Direct Deposit Refunds

Unscrupulous tax return preparers, without the taxpayer's authorization, sometimes change the routing number on a return in an attempt to misappropriate the refund. When this occurs, the IRS's position is that because it paid out the refund according to the instructions it received, the taxpayer's sole recourse is to pursue the matter in a civil lawsuit against the return preparer. According to the IRS, it does not matter that the taxpayer did not actually sign the return that the preparer filed.

I do not believe this is the right answer, especially considering that if the taxpayer had requested a paper refund check (as opposed to a direct deposit), the Treasury Department could have issued a replacement check once it verified that the original refund check was lost or stolen and therefore uncashed by the taxpayer.[38] Despite the growth of electronic banking and its own efforts to get taxpayers to e-file returns, the IRS has insufficient procedures for replacing stolen direct deposit refunds. This causes disparate treatment of taxpayers who elect to receive their refunds electronically compared to those who choose to receive paper checks, and creates a disincentive for taxpayers to e-file.[39]

When a paper refund is stolen, the Financial Management System (FMS) verifies that no person negotiated the check and issues a new one to the taxpayer.[40] If FMS finds that the paper check has been negotiated, it conducts additional research, and if it determines the taxpayer was not involved in negotiation of the check, FMS issues a replacement to the taxpayer and charges the Check Forgery Insurance Fund (CFIF).[41] The CFIF is a revolving fund established to settle claims of non-receipt and make sure innocent payees receive timely settlement checks where a third party fraudulently

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[38] *See* 31 U.S.C. § 3343; 31 C.F.R. § 235.4. *See also* FMS Form 1133, *Claim Against the United States for the Proceeds of a Government Check*.

[39] *See* National Taxpayer Advocate 2011 Annual Report to Congress 420-426 (Most Serious Problem: *The IRS Procedures for Replacing Stolen Direct Deposit Refunds Are Not Adequate*).

[40] The negotiation of a check is the process of conversion into cash or the equivalent value. http://www.merriam-webster.com/dictionary/negotiate.

[41] A settlement check is a replacement check based on the Form 1133 claim issued by FMS to replace the original check. IRM 21.4.2.4.13 (Dec. 20, 2010).

negotiated the original check.[42] The CFIF was created (long before electronic banking) by a statute that specifically refers to a "check," with longstanding rules and regulations that do not contemplate electronic payments.[43]

FMS guidelines state in part, "If the taxpayer or the taxpayer's agent gave incorrect account information, neither FMS nor IRS will assist the taxpayer with recovering the funds, and the taxpayer is free to pursue civil actions."[44] The IRS interprets this guideline as relief from further obligation as long as the account is the one listed on the return.[45] The IRS's interpretation of FMS guidelines leaves taxpayers with little recourse to recover their stolen direct deposit tax refunds.

I encourage Congress to modify the statute to expressly include direct deposits and other electronic transactions. However, I believe that even in the absence of legislation, the IRS can do more to help taxpayers whose direct deposit refunds have been stolen.

In my view, an unauthorized third party who wrongfully inserts an inaccurate bank account number on a return is not truly "the taxpayer's agent," leaving the IRS obliged to pay the taxpayer. For that reason, I believe the IRS can and should establish a process by which a taxpayer can show that whoever wrongfully altered the bank account number on a return was not an authorized agent, and upon confirmation of these facts, the IRS should pay the refund to the taxpayer.[46]

In case of a stolen direct deposit, the IRS Office of Chief Counsel previously has advised that, "the Service is legally permitted to reissue the refund to the taxpayer."[47] The Office of Chief Counsel has also advised that a return with tax data wrongfully altered by a preparer is not valid.[48] Therefore, I do not think it is too much of a stretch for the IRS to treat a return with an account number wrongfully altered by a preparer as invalid.

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[42] *See* 31 U.S.C. § 3343.

[43] Congress established the CFIF by law in 1941, before the advent of electronic checks. Pub. L. No. 77-310, 55 Stat. 777 (Nov. 21, 1941). While unrelated regulations provide for electronic checks, the CFIF regulations and rules contemplate forgery of signatures on paper. *Compare* 31 C.F.R. § 240.3 (relating to electronic Treasury checks) *with* §§ 235.1 *ff.* (governing CFIF); *see also* Treas. Fin. Man. vol. 1, pt. 4, § 7055.

[44] Green Book, *Federal Government Participation in the Automated Clearing House* 1-9, *available at* www.fms.treas.gov/greenbook/index.html.

[45] *Cf.* IRM 21.4.1.4.7.5 (Oct. 1, 2011).

[46] As indicated above, it is unclear whether the CFIF could reimburse these payments since the applicable statute refers to "forged endorsement" of paper checks. 31 U.S.C. § 3343.

[47] FSA 200038005 (June 6, 2000); *see also* 31 C.F.R. § 210.4(a)(1) (indicating that an agency that accepts an ACH authorization shall verify "the validity of the recipient's signature").

[48] *See* IRS Office of Chief Counsel Memorandum, *Tax Return Preparer's Alteration of a Return*, PMTA 2011-20 (June 27, 2011); IRS Office of Chief Counsel Memorandum, *Horse's Tax Service*, PMTA 2011-13 (May 12, 2003). *See also Beard v. Comm'r*, 82 T.C. 766 (1984), *aff'd per curiam*, 793 F.2d 139 (6th Cir. 1986).

In the case of a return fraudulently altered by a preparer, the IRS should have even more reason to assist the taxpayer than in fraud cases involving non-preparers. While a non-preparer third party who alters a return may be a mere thief, an errant preparer is not only a thief but is also violating his or her fiduciary duty to the taxpayer and the tax system. Not long ago, an IRS report stated that, "tax return preparers and the associated industry play a pivotal role in our system of tax administration and they must be a part of any strategy to strengthen the integrity of the tax system."[49] To protect the integrity of tax administration, the IRS must develop procedures that address the 21st-century version of return preparers' misappropriation of their clients' federal tax refunds.

VI. TAS Works Closely with the Criminal Investigation Division to Ensure Identity Theft Victims Receive the Attention and Assistance They Require

For many, tax return fraud may be viewed as a low-risk, high-reward venture. News reports suggest some very organized groups have chosen tax-related identity theft as the crime du jour.[50] Identity theft has become a large-scale operation, with "boiler room" operations involving the theft of massive lists of SSNs. 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.[51] Such brazen behavior suggests that identity thieves are not worried about criminal prosecution.

In April of this year, Representative Wasserman Shultz introduced a bill that encouraged the Attorney General to use all existing resources to bring perpetrators of identity theft to justice.[52] I am pleased to report that the IRS's Criminal Investigation division (CI) doubled the number of convictions against identity thieves in FY 2011. CI initiated 276 fraud cases related to identity theft, with 81 convictions – up from 224 investigations and 40 convictions in FY 2010.[53] 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.

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[49] IRS Pub. 4832, *Return Preparer Review*, at 32 (Dec. 2009).

[50] According to one report, suspects are teaching classes of 50 to 100 people at a time on how to file fraudulent returns. *See* 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/.

[51] *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/.

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

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

My office has worked closely with CI over the last few years to make sure that where CI has identified a scheme and has lists of victims' SSNs, this information is quickly transferred to the civil component of the IRS so that the victims are notified and identity theft markers are placed on their accounts. We have coordinated with CI and the Department of Justice on certain cases to ensure victims receive notification and are informed about avenues for assistance at the IRS. Only through detection, prosecution, and victim assistance will we be able to comprehensively address the rise of tax-related identity theft.

VII. The Social Security Administration (SSA) Should Restrict Access to the Death Master File.

I am concerned that the federal government continues to facilitate tax-related identity theft by making public the Death Master File (DMF), a list of recently deceased individuals that includes their full name, SSN, date of birth, date of death, and the county, state, and ZIP code of the last address on record.[54] The SSA characterizes release of this information as "legally mandated,"[55] but the extent to which courts currently would require dissemination of death data under the Freedom of Information Act (FOIA)[56] has not been tested. To eliminate uncertainty, I have recommended that Congress pass legislation to clarify that public access to the DMF can and should be limited.[57]

The public availability of the DMF facilitates tax-related identity theft in a variety of ways. For example, a parent generally is entitled to claim a deceased minor child as a dependent on the tax return that covers the child's year of death. If an identity thief obtains information about the child from the DMF and uses it to claim the dependent on a fraudulent return before the legitimate taxpayer files, the IRS will stop the second (legitimate taxpayer's) return and freeze the refund. The legitimate taxpayer then may face an extended delay in obtaining the refund, potentially causing an economic hardship, and will bear the emotionally laden burden of persuading the IRS that the deceased child was really his or hers. As a practical matter, legislation could relieve survivors of this burden by simply delaying release of the information for several years.

In light of the practical difficulties of passing legislation, however, I also urge the SSA to reevaluate whether it has the legal authority to place limits on the disclosure of DMF information administratively. In 1980, the SSA created the DMF, now issued weekly, after an individual filed suit in the U.S. District Court for the District of Columbia seeking

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[54] *See* Office of the Inspector General, SSA, *Personally Identifiable Information Made Available to the General Public via the Death Master File*, A-06-08-18042 (June 2008).

[55] *Social Security and Death Information* 1, Hearing Before H. Comm. on Ways & Means, Subcomm. on Soc. Security (statement of Michael J. Astrue, Commissioner of Social Security) (Feb. 2, 2012).

[56] FOIA generally provides that any person has a right to obtain access to certain federal agency records. *See* 5 U.S.C. § 552.

[57] *See* National Taxpayer Advocate 2011 Annual Report to Congress 519-523 (Legislative Recommendation: *Restrict Access to the Death Master File*).

certain data fields pursuant to FOIA and the court entered a consent judgment in the case pursuant to an agreement reached by the parties.[58] While the 1980 consent judgment may have seemed reasonable at the time, the factual and legal landscape has changed considerably over the past three decades.

From a factual standpoint, DMF information was sought in 1980 as a way to prevent fraud by enabling pension funds to identify when a beneficiary died so they could stop the payment of benefits. Today, DMF information is used to commit tax fraud, so there is a factual reason for keeping the information out of the public domain.

From a legal standpoint, judicial interpretations of FOIA and its privacy exceptions have evolved in several important respects, including the recognition of privacy rights for decedents and their surviving relatives.

In general, agencies receiving FOIA requests for personal information must balance (1) the public interest served by release of the requested information against (2) the privacy interests of individuals to whom the information pertains.[59]

In 1989, the Supreme Court reiterated that the public's FOIA interest lies in learning "what their government is up to."[60] The Court continued:

> Official information that sheds light on an agency's performance of its statutory duties falls squarely within that statutory purpose. That purpose, however, is not fostered by disclosure of information about private citizens that is accumulated in various governmental files but that reveals little or nothing about an agency's own conduct.[61]

Following the Supreme Court's reasoning, the Court of Appeals for the D.C. Circuit rejected a request for a list of names and addresses of retired or disabled federal employees, concluding that release of the information could "subject the listed

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[58] *See Perholtz v. Ross*, Civil Action Nos. 78-2385, 78-2386 (D.D.C. Apr. 11, 1980).

[59] *See, e.g., Department of Defense v. Federal Labor Relations Authority*, 510 U.S. 487, 497 (1994); *Department of Justice v. Reporter's Committee for Freedom of the Press*, 489 U.S. 749, 773 (1989). This balancing applies to information described in FOIA Exemption 6, 5 U.S.C. § 552(b)(6) ("personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy"), which would encompass files like the DMF. *See Department of State v. Washington Post Co.*, 456 U.S. 595, 599-603 (1982); *see also Judicial Watch, Inc. v. Food & Drug Administration*, 449 F.3d 141, 152 (D.C. Cir. 2006).

[60] *Department of Justice v. Reporter's Committee for Freedom of the Press*, 489 U.S. at 773 (quotation omitted).

[61] *Id. See also National Archives & Records Administration v. Favish*, 541 U.S. 157, 171 (2004) (quotation omitted) ("FOIA is often explained as a means for citizens to know 'what the Government is up to'").

annuitants 'to an unwanted barrage of mailings and personal solicitations,'" and that such a "fusillade" was more than a *de minimis* assault on privacy.[62]

The courts have increasingly found that privacy rights do not belong only to living persons. In 2001, the D.C. Circuit stated that:

> the death of the subject of personal information does diminish to some extent the privacy interest in that information, though it by no means extinguishes that interest; one's own and one's relations' interests in privacy ordinarily extend beyond one's death.[63]

The courts have reiterated that decedents and their surviving relatives possess privacy rights in numerous cases.[64] In the decided cases, the privacy interest at issue generally has consisted exclusively of emotional trauma. Where there is tax-related identity theft, the privacy interest is much stronger because there is a financial as well as an emotional impact. For example, a parent who has lost a child to Sudden Infant Death Syndrome and then discovers an identity thief has used the DMF to claim his child as a dependent must not only devote time trying to prove to the IRS that he was the legitimate parent, but he must also deal with the financial burden of having his tax return (and refund) frozen.

Consider two legitimate uses of DMF information. One is by pension funds that use the information to terminate benefits as of the date of a beneficiary's death. The other is by genealogists who use DMF information to help them build a family tree. While both uses are reasonable, neither fits within the core purpose of FOIA of alerting the citizenry about "what their government is up to." The D.C. Circuit has held that where disclosure does not serve the core purpose of FOIA, no public interest exists, and any personal privacy interest, however modest, is sufficient to tip the balance in favor of nondisclosure.[65] Even if a court were to decide that the DMF does serve a core FOIA purpose, it would balance the public and privacy interests and could easily conclude that the privacy interests predominate.

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[62] *National Association of Retired Federal Employees v. Horner*, 879 F.2d 873, 876 (D.C. Cir. 1989) (quotation omitted), *cert. denied*, 494 U.S. 1078 (1990).

[63] *Schrecker v. Department of Justice*, 254 F.3d 162, 166 (D.C. Cir. 2001) (citations omitted), *reiterated on appeal following remand*, 349 F.3d 657, 661 (D.C. Cir. 2003).

[64] *See, e.g., National Archives & Records Administration v. Favish*, 541 U.S. at 170 ("FOIA recognizes surviving family members' right to personal privacy with respect to their close relative's death-scene images."); *Accuracy in Media, Inc. v. National Park Service*, 194 F.3d 120, 123 (D.C. Cir. 1999) (noting that the D.C. Circuit "has squarely rejected the proposition that FOIA's protection of personal privacy ends upon the death of the individual depicted"); *Campbell v. Department of Justice,* 164 F.3d 20, 33 (D.C. Cir. 1998) ("The court must also account for the fact that certain reputational interests and family-related privacy expectations survive death."); *New York Times v. National Aeronautics & Space Administration,* 782 F. Supp. 628 (D.D.C. 1991) (concluding that NASA was not required to release audio tapes of the final minutes aboard the Challenger space shuttle).

[65] *National Association of Retired Federal Employees v. Horner*, 879 F.2d at 879.

Thus, if legislation is not forthcoming, I urge the SSA to reconsider its legal analysis and decide to take steps to restrict access to the DMF.[66]

VIII. Creating New Exceptions to Taxpayer Privacy Protections Poses Risks and Should Be Approached Carefully, If at All.

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 other provision 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.

Section 6103(i)(2) authorizes the disclosure of return information in response to requests from federal law enforcement agencies for use in criminal investigations. There is no corresponding exception in IRC § 6103 that allows for the release of identity theft information to *state or local* agencies.[67] 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 the identity theft.[68] In light of this advice, the IRS has

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[66] The SSA may be able to restrict access to the DMF without even asking the court to modify its consent judgment in *Perholtz v. Ross*, Civil Action Nos. 78-2385, 78-2386 (D.D.C. Apr. 11, 1980). By its terms, the consent judgment applies only to requests for updated information submitted by Mr. Perholtz himself, is limited to one request per year, and covers only a decedent's "social security number, surname and (as available) date of death." Our understanding is that Mr. Perholtz has not submitted requests for updated information in recent years, that the SSA is now making DMF information available weekly, and that the SSA is making public considerably more information than the three data fields described.

[67] 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; 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.

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

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.[69]

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.[70]

IX. There Is a Continuing Need for the IRS's Identity Protection Specialized Unit to Play a Centralized Role in Managing Identity Theft Cases.

Commissioner Shulman, in his written response to Senator Baucus's follow-up questions stemming from an April 2008 hearing, described the specialized unit (IPSU) as providing "a central point of contact for the resolution of tax issues caused by identity theft." His response further stated, "This unit will provide end-to-end case resolution. Victims will be able to communicate with one customer service representative to have their questions answered and issues resolved quickly and efficiently."[71] While this description fits the model for which my office advocated, it does not accurately reflect how the IPSU works in practice.

The IPSU does not "work" an identity theft case from beginning to end. Instead, it coordinates with up to 27 other functions within the IRS to obtain relief for the victim.[72] That is, the IPSU is designed to act as the "traffic cop" for identity theft cases, ensuring tha cases move along smoothly and timely, and are not stuck in one function or another. In some cases (such as when the victim faces no immediate tax impact), the IPSU simply routes the case to other IRS organizations and "monitors" the account every 60 days.[73] Ir other cases, the unit uses Identity Theft Assistance Requests (ITARs) to ask other IRS functions to take specific actions.[74]

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[69] *See* http://www.irs.gov/privacy/article/0,,id=256965,00.html (last visited June 8, 2012).

[70] *See* National Taxpayer Advocate 2011 Annual Report to Congress 505.

[71] *Identity Theft: Who's Got Your Number, Hearing Before the S. Comm. on Finance*, 110th Cong. (Apr. 10, 2008) (response of IRS Commissioner Douglas H. Shulman to questions from Chairman Max Baucus), *available at* http://finance.senate.gov/hearings/hearing/download/?id=f989b16e-5da3-452d-9675-b75d796fe2b4.

[72] IRS, Identity Theft Executive Steering Committee, *Identity Theft Program Enhancements, Challenges and Next Steps* 14 (Oct. 19, 2011).

[73] IRM 21.9.2.4.3(7) (Oct. 1, 2011).

[74] IRM 21.9.2.10.1 (Oct. 1, 2011).

While the procedures call for the receiving functions to give ITARs priority treatment, there are no "teeth" to ensure that this happens.[75] Unlike TAS, which can issue a TAO[76] if an operating division (OD) does not comply with its request for assistance in a timely manner the IPSU procedures do not specify any consequences for functions that are unresponsive to a case referral or an ITAR. Moreover, TAS has negotiated agreements with the ODs that clearly define when and how the ODs will respond to a TAS request for action. I have urged the IPSU to enter into similar agreements with other IRS ODs and functions that set forth the timeframes for taking the requested actions and to develop tracking procedures t report to heads of office when functions regularly fail to meet these timeframes.

Although the IRS has now shifted gears and plans to take a specialized approach to assisting identity theft victims, I firmly believe there remains a need for a centralized body such as the IPSU to serve as the "traffic cop." Identity theft cases are often complex, requiring adjustments by multiple IRS functions. Without a coordinator, there is a high risk that these cases will get "stuck" or fall through the cracks. The IPSU should continue to play a central role in this process by conducting a global account review and then tracking each identity theft case from start to finish, from one specialized function to another.

X. Conclusion

Identity theft and other refund-related fraud pose significant challenges for the IRS. Opportunistic thieves will always try to game the system. From their perspective, the potential rewards of committing tax-related identity theft may be worth the risk. We can do more both to reduce the rewards (by continuing to implement targeted filters) and to increase the risk (by actively pursuing criminal penalties against those who are caught). But in making the tax system less attractive to such criminal activity, we cannot impose significant burden on taxpayers.

At a fundamental level, we need to make some choices about what we want most from our tax system. If our goal is to process tax returns and deliver tax refunds as quickly as possible, the IRS can continue to operate as it currently does – but that means some perpetrators will get away with refund fraud and some honest taxpayers will suffer harm. If we place a greater value on protecting taxpayers against identity theft and the Treasury against fraudulent refund claims, we may need to make a substantial shift in the way the IRS does business. Specifically, we may need to ask all taxpayers to wait longer to receive their tax refunds, or we may need to increase IRS staffing significantly.

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[75] IRM 21.9.2.1(4) (Oct. 1, 2011) provides:

> All cases involving identity theft will receive priority treatment. This includes…Form 14027-A *Identity Theft Case Monitoring*, and Form 14027-B, *Identity Theft Case Referral*….Identity Theft Assistance Request (ITAR) referrals are also included.

IRM 21.9.2.10.1(1) (Oct. 1, 2011) provides that "Cases assigned as ITAR will be treated similar to Taxpayer Advocate Service (TAS) process including time frames."

[76] IRC § 7811.

Under current circumstances, it is simply not possible for the IRS both to process legitimate returns rapidly and to combat refund fraud effectively.

Office of Chief Counsel
Internal Revenue Service

memorandum

May 12, 2003

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Horse's Tax Service, POSTN-123371-03

This Memorandum responds to your e-mail to George Bowden dated March 26, 2003. In accordance with I.R.C. ' 6110(k)(3), this Memorandum is not to be used or cited as precedent.

Issues

1. Is a return a nullity if a return preparer increased the charitable contribution amount on a taxpayer's return to inflate a refund, and the taxpayer was unaware of the increased charitable contribution and did not benefit from that part of the refund?

2. If a return is a nullity but the taxpayer received a refund anticipation loan for the correct amount of his refund (minus normal preparation fees), does the taxpayer receive another refund when his true return is filed?

3. Is a return a nullity if a taxpayer willingly allowed the preparer to add fraudulent expenses to his Schedule C to gain a larger refund, but the preparer also increased the charitable contribution amount on the Schedule A, and the taxpayer was unaware of the inflated charitable contribution amount and doesn't benefit from that part of the refund associated with the inflated charitable contribution?

4. In both situations, should the taxpayer correct his account by filing a new return or an amended return?

5. SBSE has agreed to audit 50-100 of these Schedule C's. Is this the best way to handle these fraudulent returns?

Conclusions

1. The return is a nullity because what was sent to the Internal Revenue Service (Service) is a document unknown and unverified by the taxpayer.

2. Assuming that the taxpayer had received the correct amount based on his withholding and tax liability, there is no overpayment, and the Service should not issue a second refund to the taxpayer. Where the taxpayer sent the refund amount to the financial institution because the Service has frozen the refund, however, there is an overpayment and no unjust enrichment. In this situation, the Service should send the correct amount of refund directly to the taxpayer.

3. As in Issue 1, the return is a nullity because what was sent to the Service is a document unknown and unverified by the taxpayer.

4. The taxpayer's Master File account should be corrected by having the taxpayer whose return has been fraudulently altered by the return preparer file an accurate Form 1040 or 1040 series return from which Criminal Investigation or the SBSE Division can adjust the Master File account to reflect the correct information. The taxpayer should not file a Form 1040X because the electronic return and Form 8453 filed by the preparer are nullities and no return has been filed by the taxpayer.

5. The assignment of the SBSE division to audit a percentage of the Schedule C returns is a business decision that should be made by the Campus and the Operating Divisions.

Facts

Your e-mail presents the following scenario for analysis. Horse (this name has been changed for confidentiality purposes) is a certified public accountant preparing individual income tax returns. Horse prepared approximately 700 returns for tax year 2002, of which, approximately 450 were filed electronically with the Service. Horse prepared tax returns with the information provided by the client and printed a copy of that return to give to the client. Horse established a refund anticipation loan (RAL) account at a financial institution for that client that allowed him to issue a bank check prior to the refund being received from the IRS. Prior to transmitting the return to the Service, Horse increased the charitable contribution amount on the Schedule A without his clients knowledge in order to increase the refund received from the Service. Horse provided his client with the copy of the return printed earlier, which *did not* contain the inflated charitable contributions, and a bank check for the amount of the refund on that tax return less his $50 preparation fee.

Once the Service received the electronic return, the refund was wired to the financial institution. The financial institution then paid off the client's RAL account, deducted the RAL and bank fees, and as instructed by Horse, placed the remainder of the refund into Horse's preparer account as preparer fees. Once these fees reached Horse's preparer account at the financial institution, the fees were automatically wired to Horse's checking account.

It does not appear that any of Horse's clients were aware that Horse was increasing the charitable contribution amounts on their returns. It also appears that none of Horse's clients knew that RAL accounts were being created in their names at the financial institution.

In some cases, the Service froze the refunds and did not send the refund amounts to the financial institution. In those case, the financial institution made demand to the taxpayers for the refund amounts. Many of these taxpayers paid the financial institution the amount of the check they received, and many paid the entire amount of the RAL including the fraudulent portion that Horse received without their knowledge. The taxpayers were completely unaware that they were receiving RALs and that their refunds were routed through the financial institution.

Evidence obtained from Horse's computer and witnesses' testimony show that Horse also reported fraudulent Schedule C business expenses for several of his clients. Horse reported legal and professional fees paid to him on these Schedule Cs which in fact were never paid, and generated fraudulent invoices for expenses never paid by the Schedule C businesses. It appears that these fraudulent expenses were created *with* the clients knowledge.

Law and Analysis

Issue 1: Is a return a nullity if a return preparer increased the charitable contribution amount on a taxpayer's return to inflate a refund, and the taxpayer was unaware of the increased charitable contribution and did not benefit from that part of the refund?

The return is a nullity because the electronic file submitted to the Service is a document unknown and unverified by the taxpayer. Courts have identified a four-part test for determining whether a defective or incomplete document is a valid return: AFirst, there must be sufficient data to calculate tax liability; second, the document must purport to be a return; third, there must be an honest and reasonable attempt to satisfy the requirements of the tax law; and fourth, the taxpayer must execute the return under penalties of perjury.@ *Beard v. Commissioner*, 82 T.C. 766, 777 (1984), *aff'd per curiam*, 793 F.2d 139 (6th Cir. 1986). This generally accepted formulation of the criteria for determining a valid return, known as the *Beard* formulation or the Asubstantial compliance@ standard, derives from a venerable line of Supreme Court cases. *Zellerbach Paper Co. v. Helvering*, 293 U.S. 172, 180 (1934); *Badaracco v.*

Commissioner, 464 U.S. 386 (1984); *Florsheim Bros. Drygoods Co v. United States*, 280 U.S. 453 (1930).

The signature requirement derives from I.R.C. ' 6065 which provides that generally, any return, declaration, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall contain or be verified by a written declaration that it is made under penalties of perjury. The purpose of this requirement is to authenticate the signed document, and to verify its truthfulness.

Line 4 of Part 1 of the Form 8453 reports the amount of a taxpayer's refund. The Jurat portion of Form 8453 provides:

> Under penalties of perjury, I declare that the information I have given my ERO and the amounts in part 1 above agree with the amounts on the corresponding lines of the electronic portion of my [year] Federal income tax return. To the best of my knowledge and belief, my return is true, correct and complete.

In cases where the taxpayer is unaware of fraudulent inflated charitable contribution expenses added by the return preparer, it cannot be said that the taxpayer executed his return under penalties of perjury, because what was submitted to the Service by the preparer is not the document signed by the taxpayer. Here the taxpayer signed and verified a return that was not sent to the Service. Accordingly, the electronic file and Form 8453 fail to meet the signature requirement set forth in *Beard*, fail to meet the substantial compliance standard, and is not a return. Since the document does not constitute a return, it has no status under the Internal Revenue Code and is a nullity. Because no return has been filed, under I.R.C. ' 6664(b), no accuracy related or civil fraud penalties can be imposed against the taxpayer. However, criminal fraud penalties under I.R.C. '7206 may apply.

Issue 2: If a return is a nullity but the taxpayer received a refund anticipation loan for the correct amount of his refund (minus normal preparation fees), does the taxpayer receive another refund when his true return is filed?

The taxpayer should not be entitled to a refund from the Service when he has received through the preparer the amount to which he was in fact entitled. This is because there is no overpayment. No refund can be made unless it has first been determined that the taxpayer has made an overpayment in tax for the year. In *Jones v. Liberty Glass Co.*, 332 U.S. 524, 531 (1947), the Supreme Court defined the term overpayment broadly and colloquially, stating:

> [W]e read the term Aoverpayment@ in its usual sense, as meaning any payment in excess of that which is properly due. Such an excess payment may be traced to an error in mathematics or in judgment or in interpretation of facts or law. And the error may be committed by the

taxpayer or by the revenue agents. Whatever the reason, the payment of more than is rightfully due is what characterizes an overpayment.

Thus, assuming that the taxpayer had received the correct amount based on his withholding and tax liability, there is no overpayment, and the Service should not issue a second refund to the taxpayer. In addition, any second payment to the taxpayer would result in the taxpayer's unjust enrichment. Where the taxpayer sent the refund amount to the financial institution because the Service has frozen the refund, however, there is an overpayment and no unjust enrichment. In this situation, the Service should send the taxpayer the correct amount of refund. Since the taxpayer was completely unaware that he was receiving RALs and that the refunds were routed through the financial institution, the Service should send the refund directly to the taxpayer and not forward the refund through the financial institution.

Issue 3: Is a return a nullity if a taxpayer willingly allowed the preparer to add fraudulent expenses to his Schedule C to gain a larger refund, but the preparer also increased the charitable contribution expense on the Schedule A, and the taxpayer was unaware of the inflated charitable contribution expense and doesn't benefit from that part of the refund associated with the inflated charitable contribution?

Even though the taxpayer was aware of and consented to the fraudulent inflation of the Schedule C expenses, the taxpayer was not aware of the addition of the charitable contribution. Using the same rationale in issue 1, the taxpayer has signed and verified documents that was not sent to the Service. What was sent to the Service is a document unknown and unverified by the taxpayer. Accordingly, the electronic file and Form 8453 fail to meet the signature requirement set forth in *Beard*, fail to meet the substantial compliance standard, and are not returns. As discussed above, although criminal fraud penalties under I.R.C. ' 7206 may apply, no accuracy related or civil fraud penalties can be imposed against the taxpayer pursuant to I.R.C. ' 6664(b) because no return has been filed.

Issue 4. In both situations, should the taxpayers correct their account by filing new returns or amended returns?

The taxpayer's Master File account should be corrected by having the taxpayer whose return has been fraudulently altered by the return preparer file an accurate Form 1040 or 1040 series return from which Criminal Investigation or the SBSE Division can adjust the Master File account to reflect the correct information. The taxpayer should not file a Form 1040X because the electronic return and Form 8453 filed by the preparer are nullities and no return has been filed by the taxpayer.

Issue 5. SBSE has agreed to audit 50-100 of these Schedule C's. Is this the best way to handle these fraudulent returns?

The assignment of the SBSE division to audit a percentage of the Schedule C returns is a business decision that should be made by the Campus and the Operating Divisions. We note, however, that because no return has been filed in these cases, under I.R.C. ' 6664(b), no accuracy related or civil fraud penalties can be imposed against the taxpayer. We also note that IRM section 4.10.6.3.3(2) (05-14-1999) provides that Awhen a potential criminal fraud case is identified, preparation of a timely fraud referral to Criminal Investigation is necessary pursuant to the provisions of IRM 25.1, Fraud.@ See also IRM section 5.1.11.6, Referrals to Criminal Investigation (05-27-1999).

If you have any questions, please contact this office at (202) 622-4910.

Mr. GOHMERT. Thank you very much.

We certainly appreciate your testimony and your insights. You have certainly been in a position to observe things from both sides of these issues.

At this time, we will hear from Mr. Sanford Zinman, who is a CPA, president of Sanford E. Zinman, CPA, PC, located in White Plains, New York.

Mr. Zinman started his own practice in 1983. He has been in public accounting for more than 30 years and has expertise in compilations and tax. He is a member of the American Institute of Certified Public Accountants and the National Conference of CPA Practitioners.

He serves as the president of the Westchester/Rockland Chapter of the National Conference of CPA Practitioners and is chair of the Tax Committee for this organization. Mr. Zinman is a graduate of Iona College with a master of business administration in public accounting.

Mr. Zinman, you are recognized for 5 minutes.

TESTIMONY OF SANFORD ZINMAN, NATIONAL TAX CHAIR, NATIONAL CONFERENCE OF CPA PRACTITIONERS (NCCPAP)

Mr. ZINMAN. Mr. Chairman and Members of the Subcommittee, thank you for inviting me to testify today.

The National Conference of CPA Practitioners, NCCPAP, serves more than 500,000 businesses and individual clients. I personally regularly prepare several hundred income tax returns for clients throughout the country during any given year, and I am in the trenches with my clients, discussing their tax, financial, and personal issues.

The National Taxpayer Advocate's Office has reported a growth in identity theft in relation to tax refund fraud. The Identity Protection Specialization Unit, which was created by the IRS in 2008, has seen a continuously increasing number of cases reported to the IRS since the inception of the unit.

In fiscal year 2009, there were a total of 80,637 cases. This increased to 184,839 cases in 2010 and 226,356 cases in 2011. This is an increase in over 280 percent in just 2 years.

The real issue is what identity theft does to the individuals and what can be done to combat the problem. It is reasonable to presume that every American has either been personally affected by identity theft or has known someone who has been a victim. This is a good definition of an epidemic.

Identity theft can destroy a person's life. It can prevent them from buying a car or a house, getting a credit card, or even having a bank account. It can hamper someone's ability to get a job. The problem of identity theft will not go away. The issue is how can we protect our citizens in an efficient, cost-effective manner, and what is the Government's role in this matter?

As I prepared today's testimony, I decided to poll the NCCPAP membership about their experience with identity theft. We sent an email blast Monday morning asking, "Have you personally or professionally experienced or witnessed an identity theft situation within the past 2 years?" We requested a yes or a no response.

Within 2 days, I received responses from in excess of 25 percent of our members. And more than two-thirds of the responses were yes.

If I can extrapolate on this, that means that in excess of 335,000 of our clients have experienced or witnessed some form of identity

theft within the past 2 years. Additionally, many of the responses included that they had witnessed several cases of identity theft.

The Internal Revenue Service has, for many years, recognized the serious issue of identity theft and has instituted measures to combat identity theft and continues to do so. However, many of the IRS fixes can be cumbersome and time consuming.

The GAO has indicated that the quality of customer service at the IRS has declined noticeably because of budget cuts over the past year. The IRS was hit with a 2.5 percent budget cut in 2012, with many cuts to the enforcements and operations support. Cuts took the form of elimination of 3.1 percent of its full-time employees through attrition, hiring freeze, and targeted buyouts of more than 900 workers.

NCCPAP has strongly—is a strong supporter of identity protection and has been for many years. We spearheaded the PTIN registration for tax preparers and have partnered with the IRS in the registration of all tax preparers.

NCCPAP has recommended that full Social Security numbers be redacted from documents which are mailed to taxpayers. We also recommend that Social Security numbers be removed from client copies of tax returns that are e-filed.

Additionally, NCCPAP recommends a dedicated IRS Form 14039 Identity Theft Affidavit fax line for victims of identity theft to speed up the notification process and provide an additional level of security. We also recommend that some form of positive acknowledgments be sent to the individual within 48 hours to provide an additional level of assurance that the problem is being addressed.

NCCPAP also supports H.R. 4362, the Stop Identity Theft Act of 2012, and we thank Chairman Smith for being a cosponsor. This uses Department of Justice resources with regard to tax identity theft. We agree with the concept that no one agency or department can mitigate the problem alone. The problem is too pervasive.

We support the concept of the Justice Department working with the Treasury Department. We also support the concept that the Federal Government reach out to State governments to attack the problem of identity theft.

Thank you.

[The prepared statement of Mr. Zinman follows:]

Prepared Statement of Sanford Zinman,
National Tax Chair, National Conference of CPA Practitioners

Mr. Chairman and members of the Committee, thank you for inviting me to testify today. My name is Sanford Zinman. I am a Certified Public Accountant, member of the American Institute of CPA's and am currently the National Tax Policy Chair of the National Conference of CPA Practitioners, (NCCPAP), as well as the President of the Westchester/Rockland New York Chapter of NCCPAP. NCCPAP is a professional organization that advocates on issues that affect Certified Public Accountants in public practice and their small business and individual clients located throughout the United States. NCCPAP members serve more than 500,000 businesses and individual clients and are in continual communication with regulatory bodies to keep them apprised of the needs of the local CPA practitioner.

I am the sole owner of a CPA firm in White Plains, New York which I started approximately 30 years ago. I have been preparing individual and small business tax returns as well as sales tax and payroll tax returns for over 35 years. I regularly prepare several hundred income tax returns during any given year and am in the trenches with my clients discussing their tax, financial and personal issues and the impact of events on them. Although my clients are mostly in the New York, New Jersey and Connecticut area I have many clients in Florida, Alabama, California,

Massachusetts, Nebraska, Tennessee and Washington DC. In this respect my practice is the same as many members of NCCPAP and other CPA firms throughout the United States.

According to the Javelin Strategy & Research 2011 Survey Report, the number of US adult victims of identity fraud decreased from 10.1 million in 2003 to 9.3 million in 2005 and 8.4 million in 2007. The total one year fraud amount decreased from $55.7 billion in 2006 to $49.3 billion in 2007. There are numerous reasons for these decreases. Much of the change can be attributed to the Identity Theft and Assumption Deterrence Act of 1998. However identity fraud increased by 13% in from 2010 to 2011 when more than 11.6 million adults were victims. Approximately 1.4 million more adults were victimized by identity fraud in 2011, compared to 2010. Much of the increase in identity theft can be attributed to social media and mobile phone behaviors as consumers are still sharing a significant amount of personal information.

The National Taxpayer Advocate's office has also reported growth in identity theft in relation to tax refund fraud. The Identity Protection Specialized Unit (IPSU) which was created by the IRS in 2008 has seen a continuous increase in the number of cases reported to the IRS since the inception of the unit. In Fiscal Year 2009, IPSU had a total of 80,637 cases. In Fiscal Year 2010, this increased to 184,839 cases, and in Fiscal Year 2011, 226,356 cases. This is an increase of over 280% in just two years.

My testimony provides data of which, I am certain, you are already aware. However, the real issue is what identity theft does to individuals and what can be done to combat the problem. It is reasonable to presume that every American has either been personally affected by identity theft or has known someone who has been a victim. This is a good definition of an epidemic. Identity theft can destroy a person's life. It can prevent them from buying a house or a car, getting a credit card or even having a bank account. It can even hamper someone's ability to get a job. The problem of identity theft will not go away. Attached are a few examples of identity theft problems that have been witnessed and can be shared. The issue is, how can we protect our citizens in an efficient, cost effective manner and what is the government's role in the matter.

During the week of January 23, 2012 the Internal Revenue Service and the Justice Department engaged in a massive national sweep to crack down on suspected identity theft perpetrators as part of a stepped-up effort against refund fraud and identity theft. Working with the Justice Department's Tax Division and local U.S. Attorneys' offices, the nationwide effort targeted 105 people in 23 states. The coast-to-coast effort included indictments, arrests and the execution of search warrants involving the potential theft of thousands of identities and taxpayer refunds. In all, 939 criminal charges were included in the 69 indictments and information related to identity theft. In addition, IRS auditors and investigators conducted extensive compliance visits to money service businesses in nine locations across the country. Approximately 150 site visits occurred to help ensure these check-cashing facilities were not facilitating refund fraud and identity theft. This national effort was part of a comprehensive identity theft strategy the IRS has embarked on that is focused on preventing, detecting and resolving identity theft cases as soon as possible. In addition to the law-enforcement crackdown, the IRS has stepped up its internal reviews to spot false tax returns before tax refunds are issued as well as working to help victims of the identity theft refund schemes. To help taxpayers, the IRS created a new, special section on the IRS website (www.IRS.gov) dedicated to identity theft matters, including YouTube videos, tips for taxpayers and a special guide to assistance. The information includes how to contact the IRS Identity Protection Specialized Unit and tips to protect against "phishing" schemes that can lead to identity theft. The IRS recommended that a taxpayer who believes they are at risk of identity theft due to lost or stolen personal information should contact the IRS immediately so the agency can take action to secure their tax account. The taxpayer should contact the IRS Identity Protection Specialized Unit. The taxpayer will then be asked to complete the IRS Identity Theft Affidavit, and "follow the instructions on the back of the form based on their situation".

The Internal Revenue Service has, for many years, recognized the serious issue of identity theft and has instituted measures to combat identity theft and continues to do so. However, many of the IRS "fixes" can be cumbersome and time consuming. Beginning in 2008 the IRS implemented Service-wide identity theft indicators which are placed on a taxpayer's account if the taxpayer claimed they were a victim of identity theft. But these indicators are implemented only after the taxpayer contacts the Service with certain required substantiation documentation. The IRS can then issue an "Identity Protection PIN" which allows the legitimate taxpayer's return to bypass the identity theft filters. In mid-November 2011 selected taxpayers received

an IP PIN Notice letter notifying them that they would be receiving an IP PIN for use when filing their 2011 return. In mid-December 2011 these taxpayers received a second letter with their IP PIN which was a single-use 6 digit PIN. Some of these letters caused confusion when returns were filed partly because the program was so new. Some letters were lost which caused problems with filing returns. Some taxpayers forgot to tell their preparers that they received a letter with an IP PIN. Since this was a limited program the negative impact was very limited. Obviously, better communication could result in better outcomes.

In its final report issued on May 3, 2012 The Treasury Inspector General for Tax Administration (TIGTA) indicated that The Federal Trade Commission reported that identity theft was the number one complaint in calendar year 2011, and government documents/benefits fraud was the most common form of reported identity theft. As of December 31, 2011, the IRS's Incident Tracking Statistics Report showed that 641,052 taxpayers were affected by identity theft in calendar year 2011 versus 270,518 in 2010—a 137% increase. The TIGTA report concluded that the IRS is not effectively providing assistance to victims of identity theft, and current processes are not adequate to communicate identity theft procedures to taxpayers, resulting in increased burden for victims of identity theft. TIGTA found that Identity theft cases are not worked in a timely manner and some cases can take more than a year to resolve. Sometimes communications between the IRS and identity theft victims is limited and confusing, and some victims are asked multiple times to substantiate their identity.

TIGTA recommended that the IRS: 1) establish accountability for the Identity Theft Program; 2) implement a process to ensure that IRS notices and correspondence are not sent to the address listed on the identity thief's tax return; 3) conduct an analysis of the letters sent to taxpayers regarding identity theft; 4) ensure taxpayers are notified when the IRS has received their identifying documents; 5) create a specialized unit in the Accounts Management function to exclusively work identity theft cases; 6) ensure all quality review systems used by IRS functions and offices working identity theft cases are revised to select a representative sample of identity theft cases; 7) revise procedures for the

Correspondence Imaging System screening process; and 8) ensure programming is adjusted so that identity theft issues can be tracked and analyzed for trends and patterns.

The Government Accountability Office (GAO) indicated, in a report issued on June 8, 2012 that the quality of customer service at the IRS has declined noticeably because of budget cuts over the past year and may get worse as the agency is tasked with additional implementation work related to the health care overhaul. The IRS was hit with a 2.5 percent budget cut in fiscal year 2012, with cuts mainly to Enforcement and Operations Support. The cuts took the form of the elimination of 3.1 percent of its full-time employees through attrition, a hiring freeze, and targeted buyouts of more than 900 workers. GAO said data from the Congressional Budget Office justification for the IRS's budget fiscal year 2013 budget request shows that the percentage of phone calls that reach IRS customer service representatives is expected to have fallen to 61 percent in fiscal year 2012, down from 70.1 percent in fiscal year 2011.

It is important that the Treasury and Justice Departments work hand-in-hand to deter identity theft, and impose the severest penalty possible on those who commit it.

As identity theft increases, this also places an additional burden on the tax return preparers. Preparers often find out about identity theft issues after they are authorized to submit a tax return electronically. This only happens after the tax return is prepared, printed and mailed to the taxpayer, and the taxpayer has authorized the electronic submission of the return. On some occasions the delay between the original e-file submission and when the return finally gets filed can affect the taxpayer. States must also be made aware of identity theft problems. In New York a taxpayer's name, address, social security number and birth date are indicated on the tax return. Client copies of returns are mailed to clients for approval. A thief, armed with this information could do irreparable harm.

NCCPAP has been a strong supporter of identity protection for any years. We spearheaded the PTIN regulations for tax preparers to safeguard the preparer's social security number and have partnered with the IRS in the registration of all tax preparers to reduce the number of unscrupulous preparers who try to take advantage of the IRS modernized e-file system. NCCPAP has recommended that full social security numbers be redacted from documents (such as Form 1099R, 1099 DIV and 1099 INT) which are mailed to taxpayers. We also recommend that social security numbers be removed from client copies of tax returns that are e-filed. Additionally NCCPAP recommends a dedicated IRS Form 14039 (Identity Theft Affidavit) fax line

for victims of identity theft. This would speed up the notification process and would also provide an additional level of security compared with the present system of mailing documentation to the IRS. NCCPAP also strongly supports H.R. 4362, the STOP Identity Theft Act of 2012 which uses Department of Justice resources with regard to tax return identity theft. We agree with the concept that no one agency or department can mitigate the problem alone. The problem is too pervasive. We support the concept of the Justice Department working with the Treasury Department. We also support the concept that the federal government reach out to the state governments to attack the problem of identity theft.

Addendum

Example 1:

I prepare approximately 300 individual returns per year. In the last two years I have had three clients experience Identity theft issues, one in 2010 and two in 2011. Two of the cases involved surviving spouses.

The 2010 incident involved a doctor client who was rejected when we tried to electronically file his return. We filed it before April 15 on paper per the instructions. The client called me the end of May asking where his refund was. About a week later the taxpayer called me back and informed me that he had received written communications from the IRS at his summer residence on Cape Cod (an address never given to the IRS). We finally resolved the issue and secured the client's refund with the help of IRS Taxpayer's Assistance office.

There were two instances of identity theft this past tax season; one was a similar situation with a surviving spouse being rejected when we tried to e-file his return. The other situation involved a taxpayer who received a letter from the IRS stating the refund would be held up for standard identity check. The client's return is on extension and has not been filed yet. In both cases we have filed the proper documentation but no resolution has been reached.

Example 2:

Two separate incidents. The first; I received an e-file rejection for a taxpayer due to a possible identity theft issue. Taxpayer called the IRS numerous times and (according to the taxpayer) got different answers each time. We finally had to submit on paper. The second; I received an e-file rejection indicating that the taxpayer was deceased. I called the taxpayer who told me he received some notification from the IRS but thought he lost it. He found the IP PIN and we were able to file the return.

Example 3:

Client is a single mom with two elementary school children. One child's social security number was compromised. Neither the parent nor I were aware of this. The IRS never sent the taxpayer a notification. After the e-file was rejected we filed on paper and the refund (in excess of $4,000.00) took nine weeks to be received.

Example 4:

A taxpayer sent me her tax information in early April. We prepared the return and sent the documents to the taxpayer. We received the authorizations to e-file and did so only to have the return rejected. Neither the taxpayer nor I were able to determine from the IRS the origin of the problem for several days. We paper filed the return and then found out that someone else had e-filed using the taxpayer's social security number.

Mr. GOHMERT. Thank you, Mr. Zinman.

Mr. Michael Robinson is a lifelong resident of the Norfolk, Virginia, area; been employed by the City of Norfolk for the past 10 years; and is currently a water treatment plant operator's assistant. Mr. Robinson is here to testify today about his experience with Mo' Money Taxes.

The witnesses' written statements of all of you, as I mentioned earlier, will be entered and be part of the record, and we appreciate your staying with the 5-minute limit.

Mr. SCOTT. Mr. Chairman?

Mr. GOHMERT. Yes.

Mr. SCOTT. Could I say a word about Mr. Robinson?

Mr. GOHMERT. Yes, certainly.

Mr. SCOTT. He has made quite an effort to get here. His original transportation plans got disrupted, and he made a yeoman's effort to get here, and we appreciate his presence.

Mr. GOHMERT. Mr. Robinson, it is not like you don't know frustration and anxiety, and we are sorry if there has been any today in getting you here. But we appreciate your efforts.

At this time, we give you 5 minutes to provide your testimony. Thank you.

TESTIMONY OF MICHAEL ROBINSON,
VICTIM OF INCOME TAX PREPARATION FRAUD

Mr. ROBINSON. Good morning, everybody, ladies and gentlemen. [Pause.]

Mr. ROBINSON. Good morning, everybody, ladies and gentlemen.

My name is Michael Robinson. I am from the City of Norfolk. I work for the water treatment plant, Moores Bridges water treatment plant.

I went—I learned about——

Mr. CONYERS. Pull that a little closer to you, sir, the microphone, so that everybody can hear you clearly. Pull that up there.

Thank you, sir.

Mr. ROBINSON. I learned about Mo' Money Taxes through my family members—my daughter, my brother, his wife. They all filed through them. They were telling me to go to them for get extra money.

So I went there to get an estimate, and when I did get an estimate, me and my wife sat down. My daughter introduced me to a guy named Red, a young gentleman that were filing taxes for Mo' Money.

We sat down. He got on the computer. I gave him my ID and a check stub. He did his figures on a computer. He got up, went and talked to another gentleman. He came back. He gave me the estimate, turned the monitor screen toward me, and showed me that I could get back $3,602.

So I looked at my wife. Me and my wife, we wasn't like—I told him we weren't going to file. I would just let him know if I was satisfied, I would get back with him later. So we got up, we left. I would say about after—about a month later, I got my tax return from my job, the W-2s, at the end of January. I filed in March.

I went to Jackson Hewitt, where I usually go at. I went, me and my wife sat down. Well, first, I called the lady, Ms. Caroline, seeing we had set an appointment. Then we got our taxes done. And we signed those. We got our taxes done.

But the next day, Jackson Hewitt called me, Miss Caroline called me and told me about a problem. And I was like "a problem?" So I told her I would come there after I get off work.

Then when I got off work, she exposed me that I had been filed. And I was like, "I didn't file." She said, "You have already been filed through Mo' Money Taxes." I said, "I didn't file with Mo' Money."

So she called IRS. When IRS came, she answered the phone, Ms. Wade, Ms. Caroline, both—all three us was talking. We had Ms. Wade on the intercom, and we were talking about what had happened.

So I explained to them that I had never filed. I never signed no papers. They did it without me knowing. So she was doing something, reading something and found out in the computer that they sent me a check for $5,270, and I was like—I was in shock because I know I haven't received nothing. And she asked me did I receive a check or anything? I was like "not one brown penny."

So me and my wife was looking. And Miss Caroline asking me if we would sign some papers about some complaint about Mo' Money for using my name. So as we are sitting there, Ms. Wade informed me that they—again, she asked me did I receive any money? I said, "No, ma'am. I know nothing about it. Never received nothing."

So they did a little—opened up a little investigation of their own, Ms. Caroline and Ms. Wade, and they found out that Mo' Money had—the guy that filed my taxes name, Red, he didn't use his first, his real name. He had "Tristan something" on the paper that Ms. Wade found out that it was a female that filed, instead of him. He used the Social Security number that led to being a female.

When he turned the screen to me, it was $3,600. But whatever he done, whatever he did to get it up to $5,000, the IRS sent me a check for $5,270 was different from what he showed me on the TV screen.

And we both, me and my wife, were sitting there, and the lady was like—Ms. Wade told us that she was going to fax some papers, and they are going to open up an investigation. So she faxed that to Jackson Hewitt. We signed papers. They launched the investigation, and I did a bunch of paperwork, had the transcript from Mo' Money Taxes that I will file as a full-time student, college student.

And that was from that.

[The prepared statement of Mr. Robinson follows:]

House Judiciary Committee
Subcommittee on Crime, Terrorism, and Homeland Security
Hearing on Identity Theft and Income Tax Preparation Fraud
June 28, 2012

Testimony of Mr. Michael Robinson

I found out about MoMoney Taxes through my family members. They was telling me to get MoMoney to file my taxes, because can get you extra money when filing through them. I told them, (daughter, brother and his wife) that I always went to Jackson Hewitt Taxes. So we went to MoMoney to get an estimate on what I should receive on my taxes, My daughter introduced me to (Red), who filed her taxes. (Red), stated that he can get me extra money for my taxes, I told him I want to get an estimate, he said, OK. (Red) told me and my wife Jada to have a seat. I gave him my ID, check stub. (Red) started on the computer, he later got up, when he came back (Red) showed us on the computer screen, that we was getting $3,602.00 back. So I got my ID, check stub back, we left the building on Brambleton Ave., in Norfolk, Virginia. I was telling my daughter and wife I don't trust them for some reason. When I did get my W2's from my job, I called Jackson Hewitt, and I talked to Miss Caroline about getting my taxes filed soon. I finally went to do my taxes at Jackson Hewitt, Ms. Caroline filed my taxes, me and my wife, (Jada) signed all the papers, we went home. The next day, Ms. Caroline called me, she told me that I have a problem on the taxes she filed yesterday. OK, when I got off work, I went to her to see what was wrong. That's when I found out about MoMoney had filed me and my wife. Ms.Caroline, then called the IRS to find out what was going on. Filling out papers, the IRS rep. Ms. Wade told me and Ms. Caroline that the IRS mailed out a check in my name back in February 3, 2012. I was shocked, Ms. Wade asked me about the check, I told her I never received any money, nothing at all. That's when Ms. Wade and Ms. Caroline both filed a complaint against MoMoney taxes. Ms.Wade, said the money was sent to my bank account. Ms. Wade traced the check, it was found in MoMoney's account $5,270.

Michael Robinson
06/27/12

Mr. GOHMERT. We are going to have an opportunity for questions, and appreciate your testimony, Mr. Robinson. Obviously, you have been through quite an ordeal already.

I will utilize Chairman's prerogative and reserve my questioning. At this time, I yield to the Ranking Member, Mr. Scott, for 5 minutes.

Mr. SCOTT. Thank you.

Mr. Robinson, have you gotten your refund check yet?

Mr. ROBINSON. No, sir.

Mr. SCOTT. You still haven't gotten your refund check?

Mr. ROBINSON. No. I filed the amended. I filed the amended after——

Mr. SCOTT. You filed with Jackson Hewitt, right?

Mr. ROBINSON. Yes, sir.

Mr. SCOTT. And then they wrote back, said, well, you already filed?

Mr. ROBINSON. Right.

Mr. SCOTT. Okay. And so, they are still working on it, and you haven't gotten your refund?

Mr. ROBINSON. I haven't received anything yet. But it is supposed to be coming in like a 12-week span because I filed the amended.

Mr. SCOTT. Okay. Ms. Sparkman, what is the Federal Government doing in response to the situation with Mo' Money Taxes that Mr. Robinson has articulated?

Ms. SPARKMAN. Thank you, Mr. Chairman.

That is a great question, and I apologize that I cannot speak directly about anything that may be ongoing. But let me tell you that, first of all, I think it is a travesty that we have victims in these types of cases. I will tell you that Criminal Investigation is actively pursuing criminal investigations of perpetrators of these types of crimes because nobody should be victimized.

We have similar cases across the country where we have actively gone after return preparers who are victimizing victims by stealing their identity and getting the money for themselves. We will continue to do that actively across the Nation and put these people in jail.

Also, for Mr. Robinson, we have a victim assistance program. He would file an affidavit—it sounds like Mr. Robinson did do that—so that we could tell that he is the true taxpayer. Then we could make him whole on his tax return. The IRS marks his account so that in future years, we can protect him against being further victimized by an individual that may have already victimized him before or somebody else who may have gotten his identification.

Mr. SCOTT. And what does the victim advocate do?

Ms. SPARKMAN. I am sorry?

Mr. SCOTT. The IRS has a victim assistance program. When he files his affidavit, what do they do?

Ms. SPARKMAN. Yes, sir. I am from the Criminal Investigation; I don't have all of the specifics, but I understand that my colleagues have an active victim assistance program. They look through and ensure which identify is the correct return because we do have to make sure we know who the correct taxpayer is.

Once that is done, I understand that they mark the account appropriately and make sure that the victim is made whole. Their legitimate return is filed, it is processed and they receive their refund. The information from the bad guy who filed the return is sent to Criminal Investigation to see if we can work a criminal investigation on that matter or if that individual or that unscrupulous preparer is doing it for others.

Mr. SCOTT. Well, if somebody cashes a fraudulent check, what happens?

Ms. SPARKMAN. If——

Mr. SCOTT. And in this case, the check from—the check was cashed apparently by Mo' Money.

Ms. SPARKMAN. Okay.

Mr. SCOTT. In general, and I know you can't talk about a specific case. In general, if you catch somebody cashing a check illegally, do you just stop payment on the check? Do you just write it off? Or do you actually pursue aggressively the criminal act?

Ms. SPARKMAN. I don't know the specifics in this case, of course. But generally, it is illegal for someone to take a check that is not theirs, that they have no right to, and cash that check.

They would be committing a crime at that point. Whether that is cashed or not, it depends on the facts and circumstances of that particular situation.

Mr. SCOTT. Well, I mean, do you have enough staff to actually pursue people that you have found to have illegally cashed checks?

Ms. SPARKMAN. Yes, sir. We do. Because we find that many times these unscrupulous preparers have partners in their conspiracies who also cash the checks for them. Those check cashers we would also pursue criminally for that crime.

Mr. SCOTT. Ms. Olson, what has been your experience when people run into these kind of problems?

Ms. OLSON. As I noted in my testimony, if there is a paper check that has been forged, there is a process that the taxpayer has to submit to Treasury, to the Financial Management Service, three copies of their signature, you know, checks that are with their signature. And then FMS will compare that to the check that—the signature that is on the back of the check, and then they can pay out the proceeds to the taxpayer from this special fund.

But if the money went to a direct deposit account, and most of these thieves really like direct deposit, there is no procedure. The IRS says you have to go against Mo' Money or whomever and try to get the money back from them.

Mr. SCOTT. Well, if it is a paper check, does the Government take criminal action against those who are cashing the checks?

Ms. OLSON. If it is a large scheme, then it will convince CI to make the referral to Department of Justice and pursue it. If it is, you know, a small number of people, I think it is highly unlikely because it is a very expensive thing to bring those prosecutions.

Mr. SCOTT. Mr. Chairman, I want to point out that Mr. Robinson went into this Mo' Money Taxes and felt something unscrupulous was going on and had the intelligence to just walk out and go to someone who is a legitimate preparer.

So I want to thank you. And if others had done the same thing, we wouldn't have as much problem as we have now.

Mr. GOHMERT. Thank you, Mr. Scott.

And you are right. But obviously, some of these people don't exude the fraudulent intent that Mr. Robinson was able to pick up, and they aren't—don't know to walk out. And even as wise as Mr. Robinson acted, obviously, they still got to him.

But at this time, I would like to yield to the former Chairman of the full Committee, Mr. Conyers, for 5 minutes.

Mr. CONYERS. Thank you, Judge Poe.

Nobody has mentioned the whole question of the Smith-Wasserman Schultz bill about including identity theft. Is it because

you don't know anything about it, or you don't think it is related to this, Ms. Olson?

Ms. OLSON. In my written testimony, we thought that it was—we were very supportive of it. And I do think that it is going to take a combination of approaches, and increasing the recognition, both legally and publicly of identity theft, as a crime is going to help.

So I think that this bill is a help. However, as long as people can continue to ping our computers, something will come through, and I think it is a combination of us also developing better screens and developing better processes to help the victims to really address this crime.

Mr. CONYERS. No question that one bill alone isn't going to solve this, and you identified a number of improvements that can be made, and I congratulate you on that.

Ms. Sparkman, where do you come out on the legislation that would include identity theft like the Wasserman Schultz-Chairman Smith idea?

Ms. SPARKMAN. Thank you, Mr. Conyers.

Yes, I would have to work with my folks at tax policy, at the Treasury Department, and with the IRS to look at the specific legislation. But I will say that I appreciate the support of law enforcement. I will tell you that criminal investigation, along with bringing tax charges of false claims, 287 false claims, we are also actively charging identity theft in these types of cases.

And in fact, we are able to——

Mr. CONYERS. Okay. While you are at it, how many people have been prosecuted and convicted for all this theft and false activity having to do with filing tax claims? You keep talking about it, but I don't get any numbers. Do you have them, or can you get them?

Ms. SPARKMAN. I can certainly get those for you, Mr. Conyers, if I may take that back? But I can tell you that this year alone, we have already brought 300 indictments, that those are charges——

Mr. CONYERS. That is good.

Ms. SPARKMAN [continuing]. On these folks.

Mr. CONYERS. All right. Good start.

Now what are we—Ms. Olson, Ms. Sparkman, what are we doing about Mo' Money? We have got a witness here that has been totally ripped off. It leads me to believe that there are more around. We have got a few complaints from the Michigan attorney general about Mo' Money.

What is going on?

Ms. OLSON. Congressman Conyers, my office was approached by the Illinois attorney general's office to help them. They were taking action against Mo' Money, and they wanted to be able to put information out about the services that my office could provide and how victims could get help from the IRS.

And we have worked with them. We are both taking cases in and trying to get those cases, such as Mr. Robinson's, straightened out. And we would offer our office's assistance to any—to partner with any attorney general, State attorney general's office, including Michigan.

You know, I can't speak about the specific cases. But my local taxpayer advocates have been seeing these kinds of patterns of be-

havior for several years now, and we do work closely with Criminal Investigation to identify them and let them know about them when we——

Mr. CONYERS. Got any numbers that you can——

Ms. OLSON. I do. I think we, to date—it is in my written testimony. But I think it is about 96 cases so far just from Illinois.

Mr. CONYERS. Okay.

Ms. OLSON. And that has been a couple of months.

Mr. CONYERS. Okay. Now at the table yards away is a classic—I mean, this is a textbook rip-off that Michael Robinson has reported to you. Can't we get on—I got two officials from IRS here and a classic victim. Can't we do something with Robinson immediately?

Ms. OLSON. Well, this is——

Mr. CONYERS. I don't want to put him at the head of the line, but we can't have a hearing and talk about this academically and philosophically, and here is a victim right at the table with you. What are you going to do about him?

Ms. OLSON. First, after the hearing, I am certainly going to offer my assistance.

Mr. CONYERS. Okay.

Ms. OLSON. But my criticism of the IRS right now is his particular case, up until yesterday, the IRS had no procedures to take that return, that is the false return, off of his account and let him file a fresh return that is his return so he can get his refund.

Up until yesterday, the IRS had no procedures, even though they knew since 2003 that they were supposed to do that under the law.

Mr. CONYERS. Well, I know two Members, three Members on this Committee that are ready to call the IRS immediately after this hearing and get that corrected.

Ms. OLSON. Thank you.

Mr. CONYERS. I mean, this is outrageous. We are talking like this is philosophy, and in real life—and I commend you for being here. And you weren't even our witness. I commend the Committee for having you both here. But can we all get on this and get this in? You don't have any objection to this, do you, Ms. Sparkman?

Ms. SPARKMAN. Mr. Conyers, I will take back his information to my colleagues and to my department.

Mr. CONYERS. Well, that is not enough. I mean, I am going to take it back to them. You don't have to worry about you taking it back to them because I want this—I want to get this accomplished.

I mean, they could be looking at the hearing. It is being published nationally. So taking it back to them isn't enough. I want some action.

Ms. OLSON. Congressman Conyers, I have to say in defense of my colleague that it was Criminal Investigation that asked chief counsel of IRS four times whether the IRS must remove that bad return. They were trying to get a solution.

It is the civil side that has been dragging its feet, and I, myself, personally ordered the IRS for years to do this. And like I say, it was only until yesterday that they complied.

Mr. CONYERS. Well, Olson absolves you somewhat, Sparkman. But we have got to get moving on this. This is not a play hearing

or just file grievances, and then we all go home for the holiday. We have got to get going on this.

And I expect you to be cooperating with Scott and Cohen, myself, and the Chair as well.

Thank you very much, Mr. Chairman.

Mr. MARINO [presiding]. You are welcome, sir. I do have some questions, but I am going to defer to my colleague, Mr. Cohen. And then I will wrap up the questioning.

Mr. COHEN. Thank you. Appreciate it.

First, I would like to thank the Chairman for calling this hearing, for all the work that Mr. Scott's done in working with me on this issue about Mo' Money, which has affected so many of his constituents and mine.

Mr. Robinson, your story is one similar to one I have heard in Memphis. Do you know of other people in your jurisdiction, your area, who used Mo' Money and had similar type of problems?

Mr. ROBINSON. Yes, sir. I know a lot of people that is going through—they got checks that they can't cash. They got checks——

Mr. MARINO. Sir, I don't know if your microphone is on, or if you want to pull that a little closer as well?

Thank you.

Mr. ROBINSON. I have friends that is holding onto checks that they can't cash. People, I was like, I got nephews that had the same situation. They went to different places and been turned down because the people are not accepting Mo' Money checks, nowhere you could cash them. Some people's checks is outdated. And——

Mr. COHEN. Were some of the checks for—you couldn't get them cashed, and some places just wouldn't accept Mo' Money checks?

Mr. ROBINSON. Right.

Mr. COHEN. Did they charge large fees to cash those checks when you could get them cashed?

Mr. ROBINSON. Yes, sir. And after they seen the news and all this going on, people just stopped taking the checks.

Mr. COHEN. Did you know about the VITA program at the IRS where you could get your taxes filed without having to pay a fee? Did you know anything about that?

Mr. ROBINSON. No, sir.

Mr. COHEN. Let me ask Ms. Olson. That is a great program, and that is one of the things I think we need to come out of this is that the VITA program, low- and middle-income taxpayers can get their returns for free instead of paying companies like Mo' Money.

Why do people not know about it? Do we not have enough money to publicize this to people and let them know that they can get their taxes done for free?

Ms. OLSON. I think it is a little bit that. I think it is also that people were going to get—to some of these entities to get refunds early, the refund anticipation loans, rather than having to wait to get their refunds through direct deposit or in the mail. And the IRS can't, obviously, loan the money to the taxpayers in advance for their refunds.

That is why they go to these places, I think.

Mr. COHEN. Do you or Ms. Sparkman or anybody else know, are these anticipatory loans regulated by anybody, like the Dodd-Frank tried to regulate a lot of loans? Is that part of what that regulates?

Ms. OLSON. We have—in the last year and a half, we have seen a lot of activity through the bank regulators on these. And most of the banks have pulled out of the refund anticipation loan process.

What we are seeing instead are these tax estimation loans where you take your last pay stub for the year and you go into one of these places, and they estimate, as with Mr. Robinson, based on the last pay stub what they think that you are due. And they give you a loan for that amount or maybe a percentage of the refund amount. And then they have a little form where you are supposed to check and say I agree to come back to this return preparer and file my actual taxes.

Just like with Mr. Robinson, we have seen cases where taxpayers haven't signed that form. They have gone to somewhere else to file their return, and the original place where they have gone to get the estimation loan goes ahead and files their return based on the pay stub. They don't even have full information.

Mr. COHEN. Should this type of conduct be made illegal? Should people not be allowed to use their IRS returns to—basically, by doing that, it encourages the preparer to find ways to defraud the Government to get the money for themselves.

Ms. OLSON. And we also have evidence that these products increase the risk that people are claiming things on their returns that they are not entitled to. So it also increases tax noncompliance.

I think that——

Mr. COHEN. Would that be what—go ahead.

Ms. OLSON. I was just going to say it is a banking regulation issue who owns these kinds of loans. And I don't know the answer to that.

Mr. COHEN. Mr. Zinman, you were nodding your head.

Mr. ZINMAN. Well, I think the Mo' Money tax scheme is probably the tip of the iceberg. It is one that came out. There are so many unscrupulous preparers that are signing and filing returns as self-prepared, getting refund anticipation loans or getting the money put into their accounts, and not filing as registered tax preparers.

NCCPAP has seen a lot of that. That is why we spearheaded the PTIN registration to eliminate the tax preparers' Social Security numbers. That is why we worked very closely with the IRS to bring about the registered tax preparer issues because we need to get the whole system—especially with the e-file system, we need to get this whole system regulated so that unscrupulous people don't do these things.

Mr. COHEN. Ms. Sparkman mentioned that, that the registration requirement for preparers and a competency test, continuing education requirements. Is that sufficient? Is the test sufficient? Should it be stronger?

Mr. ZINMAN. It is a start. I know we have talked with David Williams in the IRS, and he—it is just a start. It is going to take a while before he sees whether the testing is meeting the minimum requirements. I would say it is a good start. It is a step forward

rather than a step backward, and they are at least addressing this issue.

I think we need to address the issues like the Mo' Money type of preparers, and there are still a lot of preparers out there that are not signing returns that are completely avoiding the law.

Mr. COHEN. If I can have 30 additional seconds, without objection? Thank you.

Do you see any problem with a law that would require that the return, the refund be made to the citizen and to not allow refunds to go to a third party? Would that affect legitimate folks such as yourself?

Mr. ZINMAN. I have been wrestling with that issue for a long time. And within our organization, we have talked about all sorts of fraud that can be perpetuated and brought upon citizens. And it is an issue. It is a concern.

Some of our members have advocated that a refund not be allowed to go to a bank account unless the IRS confirms the name on the bank account, as well as the account number. That is being advocated by some people, and perhaps that is an alternative.

Again, we have to get into the whole issue of banking regulations when we get into that.

Mr. COHEN. Thank you, Mr. Chairman.

I appreciate it. I yield back the balance of my time, which doesn't exist.

Mr. MARINO. You are welcome. I have one question.

There was a request from my colleagues to ask additional questions. I think that because of the time, we do have additional time to ask questions.

I have one question that I would like to present. But before I do that, I have to ask for unanimous consent that Mr. Gohmert's statement be entered into the record.

I am hearing no objection, and so ordered.

[The prepared statement of Mr. Gohmert follows:]

Prepared Statement of the Honorable Louie Gohmert, a Representative in Congress from the State of Texas, and Vice-Chairman, Subcommittee on Crime, Terrorism, and Homeland Security

Today's hearing examines the growing trend of identity theft tax fraud, and fraudulent activities by tax preparation companies.

Tax fraud through identity theft occurs when scam artists file fake tax returns claiming to be another person with the IRS or fraudulently claim someone as a dependent in order to receive an illegal refund.

Criminals obtain Social Security Numbers and other taxpayer information from various sources, including hospitals, schools, and pension funds. Another common source for this information ironically is the federal government itself, through the Social Security Administration's Death Master File—a list containing the full name, Social Security Number, date of birth, and address information for every person who dies in the United States that is published each year.

This crime can be devastating to victims, who often have to spend months and even years fighting to establish their identity to the IRS and waiting to receive any refunds actually owed to them. It is also devastating to taxpayers as a whole. While the IRS estimates that it stopped over $6.5 billion dollars in fraudulent refunds in 2010 alone, it also estimates that it still paid out approximately $5.2 billion that same year to fraudulent filers. This is taxpayer money that should have been used for much better purposes.

The IRS is working with the Department of Justice to investigate and prosecute these identity theft cases. For example, in January of this year, the IRS and DOJ announced a nationwide sweep of identity theft scam artists that resulted in actions against 105 individuals in 23 states. While I applaud these efforts, it is clear that there is still much work to be done.

A different but related problem is fraud by tax preparation companies. Unscrupulous tax preparers have been accused of preying on the most vulnerable by offering advance loans against income tax returns, or promising unrealistically high refunds that are based on intentionally false information. The Justice Department recently sued one such company but, again, it appears that there is still work to be done.

The Assistant Attorney General for Tax, Kathryn Keneally, recently testified before the Subcommittee on Courts, Commercial and Administrative Law about the Justice Department's efforts to stop both identity theft and tax preparation fraud. I look forward to hearing from our witnesses today about what else can be done to stop these destructive, and ever expanding, crimes.

Mr. MARINO. My question is pretty straightforward and simple, but I would like to start with Ms. Sparkman and anyone else who would like to comment on it.

It has been reported that in 2009, U.S. prisoners, United States prisoners in Federal prisons in this Nation collected a staggering $130 million in fraudulent tax returns, $130 million in fraudulent tax returns and refunds.

I understand that in 2010, after pressure from several United States Senators, the IRS and the Bureau of Prisons signed a memorandum of understanding to address this growing problem. What has been the progress of this agreement and collaboration? And is there anything that Congress can do and should do to help both the IRS and BOP crack down on this criminal behavior?

And being very familiar with the law enforcement segment and Bureau of Prisons, put my share of people in Federal prison, I know that routinely mail coming in and mail going out is read by the authorities. How is this happening that inmates are collecting $130 million in fraudulent tax returns?

Ms. Sparkman, please?

Ms. SPARKMAN. Chairman Gohmert, thank you very much for asking this question.

I will tell you that one way that you can help us is to reimplement the prisoner tax compliance strategy. We had a strategy where we were able to exchange data with prisons for State prisons and Federal prisons, tax return information specific when fraudulent activity is detected. That expired in December of 2011, and it was not reupped.

It is in the 2013 budget that we have proposed that you reestablish that authority to allow us to share information back and forth with these prisons. Because, as you well know, when you are already in prison, another prison sentence on top of a very hefty sentence is not as much of a deterrent, this would go a long way to reestablish this into helping us continue to exchange information in this area.

Mr. MARINO. Anyone else wish to comment? You did spawn another question that I do have. Tax returns are an obvious document. It is just not a little letter put into an envelope.

Have you ever discussed with or have any information from the Bureau of Prisons as to how these are getting through the system at the Bureau of Prisons?

Ms. SPARKMAN. I don't have that specific information. However, I can tell you that the Bureau of Prisons does provide information to us regularly about fraud they are detecting. They can send us information. We just need this reimplementation to share back.

And so, we have seen that. Remember, there are different ways to file your tax return, not only through the mail, but also electronically.

Mr. MARINO. Well, certainly, I would think that the Bureau of Prisons is monitoring what is going out on electronic mail, if that is the case.

We are going to have to——

Mr. CONYERS. Would the gentleman from Pennsylvania yield for a question?

Mr. MARINO. Yes, sir.

Mr. CONYERS. Thank you.

Are you implying that the prison system is in on this scheme?

Mr. MARINO. No.

Mr. CONYERS. Okay. Then can I ask you then do you think it is being generated by outside forces, or how is this being done? It is a staggering——

Mr. MARINO. I do not know. That is why I am asking the questions. And certainly, I did not imply, I don't know how you inferred that I thought the Bureau of Prisons was part of this.

But that is not the case. I think it is simply someone in the prison has—an inmate has decided, well, I am going to try this, and it worked.

Mr. CONYERS. But millions of dollars, that means—I mean, are all the smart guys in the Federal prisons? I don't get it, and I appreciate your candor that you don't know either. I had never heard of this before just now. That is why I just wanted to get as much clarification as I could.

Mr. MARINO. Well, we are going to try and get that clarification. And I know what the prison officers go through. I know their responsibilities, and I know the number of individuals that they have to monitor.

So something is falling through the cracks here. We will find out one way or another and correct this problem.

My colleague, Ranking Member Mr. Scott has some more questions.

Mr. SCOTT. Thank you.

Ms. Sparkman, did I understand from your previous testimony that there is a fund out of which victims like Mr. Robinson can get paid, be made whole, while the investigation goes on?

Ms. SPARKMAN. I did not—I don't know of a particular fund. However, Mr. Scott, what I did say is that when victims are victimized like this, they can work with our victim assistance program, and then they can work with them so we know who the real taxpayer is. And they can file their real return and then be able to get their refund while we are investigating, yes, the perpetrator who stole their identification——

Mr. SCOTT. So this would be an avenue for victims of Mo' Money Taxes to become whole while the investigation goes on?

Ms. SPARKMAN. That is correct. For victims of these types of schemes, they can come to our victim assistance program. We are continuing to improve our processes and procedures in working with the taxpayer advocate.

Mr. SCOTT. Okay. Ms. Olson, as an advocate, have you been able to utilize that program?

Ms. OLSON. Pardon?

Mr. SCOTT. Have you been able to help victims utilizing that program?

Ms. OLSON. We are part and parcel of that program. And in most instances, these victims come to us because they have not been able to get the assistance through the Victims Assistance Unit. It takes so long, and they economic emergencies.

They will not get a refund until the account has been cleaned up and they have proven that they are the taxpayers and not the perpetrators. And that can take months and a lot of document requests.

And as I said, in Mr. Robinson's case, up until yesterday there were no procedures to make them whole. The fund that the money is paid out of, if it is a paper check, is called the Check Forgery Insurance Fund. That is set up by statute. But the language speaks specifically about paper checks, and our counsel said it can't be read for electronic.

Mr. SCOTT. Okay. So we have some work to do to see if we can't conform that.

And Mr. Chairman, just a word about the ID theft bill that has been referred to. One of the problems with that pending legislation is the fact that it includes mandatory minimum sentences.

Mandatory minimum sentences have been studied and have been shown to disrupt normal intelligent sentencing processes, waste the taxpayers' money, do nothing to reduce crime, violate common sense. And a recent example of a mandatory minimum is the case of Marissa Alexander in Florida, who was given 20 years mandatory minimum for firing a warning shot to ward off her abusive husband.

Had she, on the other hand, just leveled the firearm, shot him and killed him, and been charged with voluntary manslaughter, the maximum she could have been looking at was 15 years. But because of the simple-minded mandatory minimum, she had to be sentenced to 20 years, not the 15 she would have been sentenced if she had just killed him and had been charged with manslaughter.

And so, I would hope that in order to get some of these mandatory minimums off the books, the first thing we have to do is stop passing new ones. And so, I would hope that as we continue trying to do something about ID theft, we don't make matters worse by adding to mandatory minimums.

And I thank you for your generosity on the time.

Mr. MARINO. Any other of my colleagues have additional questions? Mr. Conyers?

Mr. CONYERS. Sure. Thank you, sir.

I want to pick up on where Ranking Member Scott left off on mandatory minimums. Mandatory minimums is in the Chairman Smith-Wasserman Schultz bill. And I know three people on this Committee, and the Chairman from Pennsylvania may make the fourth, we are all against mandatory minimums for the reasons that Ranking Member Scott just went through.

Just as a matter of information, where are all of you on the mandatory minimum situation? And you are free to evade this question if you want to because it is not directly connected to the hearing, but it is an important part of us understanding where we all stand on these matters.

Ms. Sparkman.

Ms. SPARKMAN. I would definitely need to defer to my colleagues at the Department of Justice because that is in the purview of the courts. But I do think we should still continually actively investigate these crimes. I believe that jail sentences are a deterrence. But as to the actual amount of time, I would defer to my colleagues at the Department of Justice.

Mr. CONYERS. What a dodge.

Okay. Ms. Olson, can you do any better?

Ms. OLSON. Well, I am going to dodge on the mandatory minimums, but let me say about in general the risk of committing this crime needs to be increased. Because right now——

Mr. CONYERS. Yes, the sentencing. And that is our——

Ms. OLSON. Yes. That is——

Mr. CONYERS. That is how we take care of eliminating the mandatory minimum provision is by increasing the sentencing. But that is leaving it to the court. That is the discretion of the judge, which is, in our opinion, where these decisions ought to rest rather than on an automatic law that takes the discretion out of the court's hands.

Ms. OLSON. Yes, but I am not going to comment on mandatory minimums.

Mr. CONYERS. Well, now you are not with the Government.

Mr. ZINMAN. No, I am not.

Mr. CONYERS. Mr. Zinman?

Mr. ZINMAN. I am only a CPA. I am not an attorney.

Mr. CONYERS. Right.

Mr. ZINMAN. But I do know identity theft, tax fraud very often is a low-risk, high-yield situation, and we have got to switch that around. We have got to do something about making this an issue that there are some real problems to face if you get caught doing this, and we need to address the real issues of where they are coming from.

A lot of this stuff——

Mr. CONYERS. Do you think mandatory minimums, you think the people committing these crimes check to see if there is a mandatory minimum before they do it?

Mr. ZINMAN. I do not think that they check to see that there is a mandatory minimum, but I think that they do believe that it is a low-risk crime.

Mr. SCOTT. Would the gentleman yield?

Mr. CONYERS. Surely.

Mr. SCOTT. The low risk is whether you get caught or not, and what happens in sentencing is later on in the process. To increase the risk, you have to increase the investigation and prosecution. What happens in sentencing is further down the line, and most people calculate whether they are going to get caught or not, not as much what the penalty is going to be.

Mr. ZINMAN. That is right, and that is why I am a CPA and not an attorney.

Mr. CONYERS. Well, CPAs can have an opinion on mandatory minimum.

Mr. ZINMAN. Yes.

Mr. CONYERS. You don't get excused because you are not a lawyer.

Mr. ZINMAN. That is correct.

Mr. CONYERS. We invited you here maybe because you weren't a lawyer.

Mr. ZINMAN. That is right, and we are—the CPAs, I can't speak for every one of them. But as a whole, we are the trusted professionals, and we do want the law enforced. Whatever the Congress decides, whatever the attorneys and the courts decide is the law, we will allow that. But we do want some sort of enforcement because the e-file tax system is starting to run amok.

Mr. CONYERS. Sure. Well, we are talking about lengthening the time, the sentencing, increasing the period of incarceration when you are caught as a replacement to mandatory minimums. So I put you in the dodger category with the other two witnesses. [Laughter.]

Mr. COHEN. Mr. Chair?

Mr. MARINO. Please, go ahead, sir.

Mr. COHEN. Thank you.

Let me ask Ms. Sparkman a question. In this time of budget constraints and desires by all of us to deal with the deficit, is cutting monies to the IRS in some of these across-the-board type things, is that counterproductive in that if the IRS has more money for agents and for scrutiny of returns that the return to the United States Government will be greater? The more money the IRS has to enforce its laws, would that result in greater revenues to the United States Government?

Ms. SPARKMAN. Well, certainly, Mr. Cohen, more resources have more work, and I will tell you that in our 2013 budget proposal, there is a provision in there for increased resources specifically for identity theft. And those resources are in there to be across the board to help all sorts of different departments in the Internal Revenue Service attack this critical, critical issue.

And I will also tell you that even in these declining resource times, the IRS has taken steps to move our current resources into this very critical area of identity theft so that we can combat this problem with our current resources, and we have moved those resources today.

Mr. COHEN. And let me ask you this. You can't comment on an ongoing investigation.

Ms. SPARKMAN. That is correct.

Mr. COHEN. But we know that the IRS did raid the Mo' Money company in Memphis and get certain information. When a com-

pany has a name like Mo' Money, which probably should have been "Mo' Money than you are entitled to," shouldn't the IRS look at some companies like that and look at them before Mr. Robinson and other people are taken advantage of and then the case comes to your attention through Mr. Scott and my office, the media, et cetera?

Ms. SPARKMAN. Mr. Cohen, I appreciate your question. Obviously, in criminal investigations, we have to look at the evidence that leads to the crime. Simply a name is not necessarily illegal to——

Mr. COHEN. It is not illegal. But you don't have to have probable cause necessarily, do you, to look into something? Maybe you start to check some returns and see if there are like a pattern of behavior.

Ms. SPARKMAN. We have actively pursued and looked at many unscrupulous preparers from across the Nation, who appear to be doing bad things and victimizing folks like this and like Mr. Robinson.

Mr. COHEN. All this money in this scheme was going to different banks, and they would send the money, as I understand it, the agency would be asked to send the money to Up2U, "Up 2 U." Not up with Chris Hayes, but Up2U. And then deposit the money in Value Bank, and then Up2U would tell the company called TRX Alliance that the money is in the bank, and they would go ahead. And Mo' Money——

There is a lot of float involved here, isn't there?

Ms. SPARKMAN. A lot of—I am sorry?

Mr. COHEN. Float. Money that is just sitting there, and there is interest collected by somebody.

Ms. Olson, you seem to know float. Do you want to float with that one?

Ms. OLSON. I am just rather amazed at the scheme you have described. The IRS has filters that they use to identify patterns of return filing. And so, rather than just looking at a name of an entity, what they would look at is the data based on the returns coming in, and that will actually help us focus on here is a return preparation firm or here is a return preparer that is associated with all these—you know, what questionable returns.

And that is when we would go out and focus. And certainly, some of those screens are through the Criminal Investigation Division. That is how they develop many of their cases.

So it is really a data-based issue. But in the meantime, the legitimate taxpayers' returns are coming in and also being frozen, as well as these questionable ones.

Mr. COHEN. Mr. Zinman, have you looked at Mo' Money and other firms like this and the fees they charge people and the fees the banks charge, et cetera? Are you familiar with it?

Mr. ZINMAN. We have seen that, yes.

Mr. COHEN. And how are they compared to the fees that traditional CPAs would charge?

Mr. ZINMAN. Interestingly, they are not a whole lot cheaper sometimes than what regular CPAs charge, who don't get involved in return anticipation or advance loans or any of these things. CPAs who perform the work and legitimate registered tax pre-

parers who perform the work very often perform it at a reasonable fee.

Jackson Hewitt performed the work for Mr. Robinson, and I would imagine it was a reasonable fee, and they prepared a correct return. So a lot of these companies or individuals who do these schemes really are not looking for the fees. They don't care about the fees. They care about the refunds and getting the money.

Mr. COHEN. And then the fees that they charge for the anticipatory loans is really where they——

Mr. ZINMAN. Oh, the fees—the rates are ridiculous, yes.

Mr. COHEN. And this has put a bad tenor over the entire industry, including your group. Is your group, which has not been part of this, doing anything to try to help either the victims of these scams or the industry to come up with higher and better standards?

Mr. ZINMAN. We constantly work with governmental agencies. Within my testimony, written testimony, I mention that New York State did something this year. And I am actually going to go up to Albany this summer and ask them what they were thinking because on the tax return where you send a copy of the tax return to the individual to get approval, it asks for—the New York State tax return asks for your name, address, Social Security number, and date of birth. Sort of an invitation for somebody to steal an identity.

So NCCPAP continuously works with governmental agencies. We work closely with the IRS. As a matter of fact, there is a NCCPAP member right now at the IRS for the National Public Liaison meeting because we constantly try to inform them of what we see going on, boots on the ground, so to speak.

Mr. COHEN. I want to thank, once again, the Chairman for holding the hearing, Mr. Scott, our Chairman today, and all the panelists. This is very important because this is a rip-off both of citizens, who are the most vulnerable and need these refunds and are being taken advantage of, and a rip-off of the Government.

And they are ripping off from both directions. And it really is hundreds of millions of dollars if it came from the prison folks, but also in general of tax fraud costing us money that could be used to help offset the deficit.

Thank you, and I yield back the balance of my time.

Mr. MARINO. I just have a request and a statement, and we will bring this to a conclusion.

Ms. Sparkman, could you inquire with the Bureau of Prisons the issue that we discussed about the inmates collecting refunds and perhaps get an explanation? And I am going to do the same thing as well.

Ms. SPARKMAN. Yes, sir.

Mr. MARINO. And when you get that information from them, would you please forward it to the Committee, to the Chair, and we will compare it with the response that I get.

And in conclusion, my colleagues, and I want Mr. Conyers to know that he knows that I support mandatory minimums—I am not going to dodge the issue, sir—to a certain extent and in certain situations. And I look forward to discussing with my colleagues the

issue of mandatory minimums and how we can come to an understanding.

I do find it interesting and it is an interesting concept on how eliminating mandatory minimums is going to increase the penalties. But I think that is a discussion for another day. I don't want to take——

Mr. CONYERS. Would the gentleman yield? Just briefly, we are substituting, we are not trying to keep mandatory minimums and increase the penalties. We are trying to increase the penalties so that that will be a larger deterrent, but we will be transferring that judgment to the courts and not to Members of Congress.

Mr. MARINO. That is part of the debate. And as a prosecutor for 19 years, I see the pros and cons of each. So look forward to working with you on these issues, sir.

Mr. CONYERS. Thank you very much.

Mr. MARINO. And I know that my colleague Mr. Scott cited a case. And if you would be so kind, I would like to—if you would be able to at some point give me the cite on that case, I would like to look into it because——

Mr. SCOTT. Marissa Alexander's case has been widely reported.

Mr. MARINO. Okay.

Mr. SCOTT. It is particularly in light of the fact that it is in Florida, with all of the what happens when somebody shoots somebody controversy in Florida. For her to get 20 years mandatory minimum, and we will provide you with——

Mr. MARINO. Would you? Because I would like to read that, and I want to be part of preventing an injustice. Although I do have to add, sir, that being involved in many drug raids, it is not unusual for a shot to be fired from the drug dealer's side as a warning.

So I just want to know the details, and hopefully, we can eliminate situations if it is——

Mr. SCOTT. The point of eliminating a mandatory minimum is it eliminates the requirement that the judge mindlessly impose a simple-minded sentence that makes no sense. If a sentence makes sense, the judge can impose it in appropriate cases. And in fact, that is what the Supreme Court said a couple of days ago with mandatory life without parole for juveniles.

Didn't say that life without parole for juveniles in non-homicide cases was unconstitutional. It said that making it mandatory in all cases whether it made sense or not was unconstitutional. But if you are going to apply that kind of sentence, you have to look at the individual case and make sure it is appropriate.

Mr. MARINO. But we know with involving minors, particularly in cases of murder, that it is a different standard by which we review it because of the age of the individual. It is not that I disagree with that ruling, just it is apples and oranges compared to a 14-, 15-, or 16-year-old involved in a homicide and someone over the age of 18.

But again, that is an issue for another day, and I want to thank my colleagues.

And in closing, I would like to thank our witnesses for their testimony today and coming in here and giving us your time and letting the American people know what is going on.

Without objection, all Members will have 5 legislative days to submit to the Chair additional written questions for the witnesses, which we will forward and ask the witnesses to respond as promptly as they can so that their answers may be part of the record.

Without objection, all Members have 5 legislative days to submit any additional materials for inclusion in the record.

With that, again, I thank the witnesses, my colleagues, the people visiting us, and this hearing is adjourned.

Thank you, ladies and gentlemen.

[Whereupon, at 11:07 a.m., the Subcommittee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

Prepared Statement of the Honorable Robert C. "Bobby" Scott, a Representative in Congress from the State of Virginia, and Ranking Member, Subcommittee on Crime, Terrorism, and Homeland Security

Thank you, Chairman, for calling this hearing, particularly on the issue of tax preparer fraud. You will recall that Reps. Cohen, Rigell, Thompson of Mississippi, and I wrote to you in March requesting a hearing into the interstate activities of the tax preparation firm Mo Money. We have each had many constituents contact our offices with complaints regarding their dealings with Mo Money. I want to thank you for agreeing to our request by including this issue in today's hearing, and I am pleased to welcome today Mr. Michael Robinson, from Virginia's 3rd Congressional District, to tell us about his experience with the company. Thank you, Mr. Robinson, for making the trip up from Norfolk to share with us your experience. I look forward to hearing your testimony.

Over the last several months I have heard troubling stories from many people in my district involving the tax preparation firm Mo Money. Some of these stories involve customers who assigned their refund from the IRS to Mo Money in order to get a refund anticipation loan. The checks these customers received from Mo Money containing their loans or refunds then "bounced," and Mo Money has not made good on many of those bounced checks. Other stories involve customers who never received a tax refund at all, although IRS records reflect that refunds were sent to Mo Money pursuant to the customers' assignments. Some customers say Mo Money deducted additional fees from their refund checks without their consent, or included additional deductions on their returns to which they were not legally entitled (and for which they would be penalized by the IRS), or submitted tax returns to the IRS without authorization or a signature, or did not give customers a copy of their tax returns. My colleagues Mr. Rigell, Mr. Cohen, and Mr. Thompson received similar complaints from their constituents, as well.

According to reporting by WAVY TV in Portsmouth, and WTVR in Richmond, none of the Mo Money franchise locations listed on the Better Business Bureau web site are accredited, meaning they do not get the BBB's seal of approval when it comes to good business practices. Many on the list received an "F" rating. In addition, two states have taken public action against Mo Money Taxes. In 2010, the Arkansas Attorney General sued Mo Money Taxes for failing to properly disclose fees on refund anticipation loans, and the company had to pay $25,000 in fines for illegal business practices. The Illinois Attorney General filed suit against the company this year for overcharging taxpayers and filing inaccurate returns.

Complaints about what customers have experienced with Mo Money have been made to Congressional offices, the IRS, the department of Justice, and state and local authorities. I am sorry that Mr. Robinson was victimized, but I appreciate his willingness to make the sacrifices he had to make to come and tell us here today about his experience. I look forward to exploring what we can do to prevent this from happening to others.

What we do to address the problems of fraud and identity theft should be effective and measured. While I appreciate the sentiments and efforts behind H.R. 4362, the

"STOP Identity Theft Act of 2012," which will be discussed here today, I cannot support an effort that seeks to stop one injustice by applying another. H.R. 4362 adds tax fraud as a predicate for aggravated identity theft under 18 U.S.C. § 1028A(c). The penalty for aggravated identity theft is a mandatory term of imprisonment of 2 years or, for an offense related to terrorism, 5 years. Because of the mandatory minimum sentences included in H.R. 4362, this bill is not the solution to the problem of identity theft. It doesn't mean that some should not be sentenced to these amounts, or more, but to require an unjust sentence to be imposed before any of the facts or circumstances of the case, or the characteristics of the defendant, are taken into account, is unnecessary and wrong.

Mandatory minimums have been studied extensively and have been found to distort rational sentencing systems, to discriminate against minorities, to waste the taxpayer's money and to often violate common sense. Even if everyone involved in a case, from arresting officer, prosecutor, judge and victim, believes that the mandatory minimum would be an unjust sentence for a particular defendant in a case, it still must be imposed. Mandatory minimum sentences, based merely on the name of a crime, remove sentencing discretion from the judge. Regardless of the role of the offender in the particular crime, the offender's record or lack thereof, or the facts and circumstances of the case, the judge has no discretion but to impose the mandatory minimum set by legislators long before the crime has been committed. This is what brings about results such as that in the recent case of Marissa Alexander, a mother of 3 and graduate student, who was sentenced to a mandatory minimum sentence of 20 years for discharge a gun to warn off an abusive husband during a dispute. Ironically, if she had intentionally shot and killed him under such circumstances, the maximum penalty for voluntary manslaughter is 15 years!

The two year and five year mandatory sentences in H.R. 4362 are, therefore, problematic, even though I support the intent of the sponsors to do more to address identity theft. This is the third mandatory minimum we have considered in a month, and each time we hear, "This bill is not a new mandatory minimum, it's just adding a new crime to a statute that already has a mandatory minimum" or "it's just one more." First it was synthetic drugs, then VAWA, now it's identity theft. We need to stop passing mandatory minimums. Identity theft is a serious problem, but mandatory minimum sentences are never the solution.

I again thank the Chairman for calling this hearing and welcome Mr. Robinson and the other witnesses, and I yield back my time.