



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

December 8, 2014

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

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

RE: S. 2736 – Tax Refund Theft Prevention Act of 2014

Dear Chairman Wyden and Ranking Member Hatch:

The American Institute of Certified Public Accountants (AICPA) commends the Committee on Finance on their continuing efforts to combat identity theft and tax fraud. The growing amount of fraudulent tax refunds paid and the economic and emotional impact to individual victims of identity theft are unacceptable.

The AICPA has previously provided detailed comments and recommendations on many of the provisions contained in the [Tax Refund Theft Prevention Act of 2014](#) (“Act” or “Proposal”). For example we have provided comments regarding the single point of contact for victims, truncating social security number (SSN) on Forms W-2 and the expansion of the IP PIN system.¹ The AICPA supports continued efforts to combat fraud and identity theft, consistent with many of the provisions in the Act. We have included recommendations to some of the provisions in the Act to make the Act more effective and consistent. We do not support the provision, however, to increase the penalty for improper disclosure or use of information by preparers of returns as we do not believe tax preparers are the root of the problem for tax refund theft.

We appreciate the opportunity to provide our comments on the Act.

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

Safe Harbor for De Minimis Errors on Information Returns and Payee Statements (Sec. 2)

Under this provision, information returns, with an error of no more than \$25 in income, would be considered as having been filed with the correct information. The AICPA generally supports safe harbor provisions for de minimis errors on information returns. However, to make an impactful difference on the number of corrected information returns filed, we suggest raising the misstatement threshold to \$50 in income, as also recommended in the 2013 Information Reporting Program Advisory Committee (IRPAC) Public Report.²

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

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

Internet Platform for Form 1099 Filings (Sec. 3)

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

Requirement that Electronically Prepared Paper Returns Include Scannable Code (Sec. 4)

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

² According to the [2013 IRPAC Committee Public Report](#), 59% of the corrected forms reported changes less than \$50 in income. The report also indicates 49% of the corrected forms reported changes less than \$30 in income and 27% of the corrected forms reported changes of less than \$10 in income.

Single Point of Contact for Identity Theft Victims (Sec. 5)

The AICPA supports the provision that requires a single point of contact at the IRS for identity theft victims who have had their tax returns delayed or otherwise adversely affected. We think that a single point of contact throughout the processing of a victim's case would significantly reduce the victim's level of stress and confusion through an extremely difficult time.

Additionally, we believe efficiencies will result as the single point of contact will identify areas of duplication, such as validating themselves each time they speak to a new agent, and areas causing delays.

Criminal Penalty for Misappropriating Taxpayer Identity in Connection with Tax Fraud (Sec. 6)

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

Extend IRS Authority to Require a Truncated Social Security Numbers on Form W-2 (Sec. 7)

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

In addition, the AICPA recommends an extension of the provision to require the use of a truncated identification number (i.e., SSN, IRS individual taxpayer identification number (TIN), or IRS adoption TIN³) on all types of tax forms and returns provided to a client, employee or other recipient. We also support modification of Code section 170(f)(12),⁴ regarding contributions of cars, boats and airplanes, to allow the truncation of the SSN on the acknowledgement letter to the donor.

Improvement in Access to Information in the National Directory of New Hires for Tax Administration Purposes (Sec. 8)

The AICPA supports granting limited access and use to the IRS of the National Directory of New Hires (NDNH), a database established to assist child support agencies by providing wage and employment information of individuals. Specifically, we support granting the IRS access for the sole purpose of identifying and preventing fraudulent tax return filings and claims for refund. Restricting immediate access of the NDNH to users with legitimate fraud prevention needs and delaying access to other users is a reasonable way to support fraud prevention efforts.

³ An adoption TIN is a temporary identification number for a child in the process of an adoption where the SSN is not obtained or unattainable at that moment.

⁴ All section references in this letter are to the Internal Revenue Code of 1986, as amended, or the Treasury regulations promulgated thereunder.

Password System for Prevention of Identity Theft Tax Fraud (Sec. 9)

The Proposal requests implementation of an identity theft tax fraud prevention program that allows any individual to request a unique password for use with filing his/her Federal tax return. The AICPA fully supports this provision.

This program is similar to the Identity Protection Personal Identification Number (IP PIN) program except that the IP PIN is currently offered only to victims of identity theft. The AICPA has previously urged the IRS to consider issuing IP PINs to all individuals, and appreciates Congressional action in this area.

The Proposal also requires that the Department of the Treasury provide a report on the efficacy of such a program. We support this mandate.

Increased Penalty for Improper Disclosure or Use of Information by Preparers of Returns (Sec. 10)

The AICPA opposes an increase in tax return preparer penalties under IRC sections 7216 and 6713, as provided for in the Act.

The focus of efforts to curb identity theft should fall squarely on the causes of identity theft. The true cause of identity theft does not stem from inappropriate behavior by tax return preparers. Tax-related identity theft is typically committed with the personal information of individuals who have no filing requirement.⁵ Identity thieves often obtain personal information by theft or find the necessary personal information on the internet. For the tax-related identity theft crimes that are committed by tax return preparers, there are numerous other severe criminal penalties that already can be imposed on those individuals.⁶ Thus, increasing the civil penalties for improper disclosure or use of tax return information by tax return preparers will not deter nor curb tax return preparation identity theft.

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

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

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

⁷ Effective in 2009, Treas. Reg. § 301.7216 addresses modern return preparation practices, including electronic filing and the cross marketing of financial and commercial products and services by tax return preparers. Absent a specific exception, Treas. Reg. § 301.7216 generally prohibits the disclosure or use of tax return information without the client’s explicit, written consent. In general, a “disclosure” of tax return information involves a disclosure by the preparer of a client’s return information to a third party. A “use” of tax return information generally involves the use of the return information by the

Increase Electronic Filing of Returns (Sec. 11)

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

The Proposal also requests commentary on assessing a penalty for not e-filing an individual return. Since many individual taxpayers, particularly seniors, remain uncomfortable with the internet or do not have secure online connections, we do not support a penalty against individual taxpayers who prepare their own returns and do not e-file. In addition, the taxpayer should still have the ability to opt out of e-filing a return without subjecting the tax return preparer to a penalty.

Increased Real-Time Filing (Sec. 12)

The Proposal changes the due date of certain information returns to February 15 and recommends a study to consider administrative implementation issues, including whether other due dates should be accelerated to January 31.

The AICPA generally supports the acceleration of due dates for filing information returns, including Form W-2, Wage and Tax Statement, with the IRS. However, we are concerned about the use of a single deadline (e.g., February 15) for all information returns. To provide more flexibility, we recommend requiring the payer or employer to file all information forms with the IRS within 15 days of the due date to taxpayers. Such an acceleration of the due date to the IRS should increase the likelihood that the agency can properly match the reported information with amounts reported on tax returns, thereby reducing the risk of identity theft.

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

Finally, we appreciate your consideration of a study on the acceleration of due dates for filing Forms W-2, W-3 and 1099 with the IRS and SSA to January 31. However, we note that accelerating the due date to January 31 for brokers would create problems related to properly identifying wash sales.⁸ Brokers cannot properly identify all potential wash sales until at least January 30. We believe a due date of

preparer potentially for the purposes of offering non-tax services to the taxpayer. Under section 7216, a tax return preparer is subject to a criminal penalty for “knowingly or recklessly” disclosing or using tax return information. Each violation of section 7216 could result in a fine of up to \$1,000 or one year of imprisonment, or both. Section 6713, the companion civil penalty, imposes a \$250 penalty on a preparer for each prohibited disclosure or use of the return information, not to exceed \$10,000.

⁸ Under Code section 165, taxpayers are not permitted a deduction for any loss sustained from any sale or other disposition of stock or securities if the taxpayer acquires substantially identical stock or securities within a period beginning 30 days before the date of the sale or disposition and ending 30 days after that date.

January 31, merely one day later, would not provide brokers sufficient time to analyze, correct and properly report this information.

Limitation on Multiple Individual Income Tax Refunds to the Same Account (Sec. 13)

The AICPA supports the provision to restrict the delivery or deposit of multiple tax refunds from the same tax year to the same individual account or mailing address. We believe this provision will further efforts to reduce instances of tax-related identity theft.

Earlier this year, the IRS established new procedures (effective January 1, 2015) to limit the number of refunds electronically deposited into a single financial account or pre-paid debit card to three refunds. The fourth and subsequent refunds will be converted to a paper refund check and mailed to the taxpayer. These new procedures will impact families with children directing the refunds to be deposited to a family held checking account. However, despite the potential inconvenience to related taxpayer sharing the same bank account, we believe overall that this provision will help to deter fraud and theft.

Identity Verification Required Under Due Diligence Rules (Sec. 14)

The Proposal provides for a penalty for tax return preparers who fail to comply with due diligence requirements in regards to verifying the identity of the taxpayer when claiming the earned income tax credit (EITC).

The AICPA strongly supports that tax return preparers should comply with due diligence requirements, therefore we support this provision. Failure by tax return preparers to comply with basic due diligence procedures can contribute the proliferation of return preparation fraud.

Report on Refund Fraud (Sec. 15)

The AICPA supports this provision which requires a report, due one year from enactment, to the Committee on Finance and the U.S. House Committee on Ways and Means, to include the extent and nature of the fraud involving the use of misappropriated taxpayer identity with respect to claims for refund and the detection, prevention and enforcement activities by the IRS with respect to:

- the development of fraud detection filters and how they are or may be updated and improved;
- the effectiveness of fraud detection activities, and the ways in which such effectiveness is measured; and
- the methods by which IRS categorizes refund fraud, and the amounts of fraud that are associated with each category.

We believe the report would provide the useful information to allow Congress to measure how and when the provisions are implemented and their impact on tax return identity theft.

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

Since many of these proposals are based on internet and e-government services, such as the Internet Platform for Form 1099 Filings and Taxpayer Notification of Suspected Identity Theft, we recommend that the office of E-Government and Information Technology review the proposed changes to ensure consistency with the emerging best government practices on e-government or information technology.

In conclusion, while the AICPA is overwhelmingly in support of efforts focused on combating identity theft, we believe care must be provided to target those efforts towards the areas of greatest risk. We do not think that tax return preparers are the cause of identity theft and therefore, do not support increases to existing penalties for unauthorized disclosures of tax return information.

We also understand that the immediate implementations of these measures are only the first steps and no system will completely eliminate identity theft and tax fraud. Nevertheless, we think the long-term benefits in terms of direct cost savings and overall trust in the integrity of the tax system would offset the expense of establishing such a system.

The AICPA is the world's largest member association representing the accounting profession, with more than 400,000 members in 128 countries and a history of serving the public interest since 1877. Our members advise clients on Federal, state and international tax matters and prepare income and other tax returns for millions of Americans. Our members provide services to individuals, not-for-profit organizations, small and medium-sized businesses, as well as America's largest businesses.

The AICPA welcomes the opportunity to discuss these comments on the Tax Refund Theft Prevention Act of 2014 or to answer any questions that you may have. I can be reached at (801) 523-1051 or tlewis@sisna.com; or you may contact Melanie Lauridsen, AICPA Technical Tax Manager, at (202) 434-9235, or mlauridsen@aicpa.org.

Sincerely,



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

cc: Senate Committee on Finance Members
The Honorable John Koskinen, Commissioner, Internal Revenue Service
The Honorable Mark Mazur, Assistant Secretary for Tax Policy, Department of the Treasury
The Honorable William J. Wilkins, Chief Counsel, Internal Revenue Service
The Honorable John H. Isakson, R-GA
The Honorable Clarence William "Bill" Nelson II, D-FL