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STOLEN IDENTITY REFUND FRAUD PREVENTION ACT

JULY 12, 2016.—Ordered to be printed

Mr. HATCH, from the Committee on Finance,
submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany S. 3157]

The Committee on Finance, having considered an original bill, S. 3157, to prevent taxpayer identity theft and tax refund fraud, and for other purposes, reports favorably thereon without amendment and recommends that the bill do pass.

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I. LEGISLATIVE BACKGROUND

The Committee on Finance, having considered S. 3157, the “Stolen Identity Refund Fraud Prevention Act,” to prevent taxpayer identity theft and tax refund fraud, and for other purposes, reports favorably thereon without amendment and recommends that the bill do pass.

Background and need for legislative action

Background.—Based on a proposal recommended by Chairman Hatch, the Committee on Finance marked up original legislation (the “Stolen Identity Refund Fraud Prevention Act”) on April 20, 2016, and, with a majority present, ordered the bill favorably reported.

Need for legislative action.—The Chairman, Ranking Member, and members of the Committee are well aware of the proliferation of tax-related identity theft and tax refund fraud perpetrated not just by nefarious individuals acting alone or in groups, but also by sophisticated networks of criminals operating globally. The Committee believes legislation is necessary to provide additional tools to the Internal Revenue Service and taxpayers to address these problems. Previously, the Chairman and Ranking Member introduced legislation (S. 2736, the *Tax Refund Theft Prevention Act of 2014*, 113th Congress, 2nd Session) that would enhance the ability of the Internal Revenue Service to identify and prevent fraudulent tax refund claims that are made with the use of stolen taxpayer identities and provide additional assistance for those taxpayers who have been victims of this crime. In addition, Senator Nelson

introduced legislation (S. 676, the *Identity Theft and Tax Fraud Prevention Act of 2015*, 114th Congress, 1st Session) and Senator Isakson played a large role in working to address stolen identity refund fraud. Further, during this Congress the Committee has held hearings on “Cybersecurity and Protecting Taxpayer Information” (April 12, 2016) and “Protecting Taxpayers from Schemes and Scams During the 2015 Tax Filing Season” (March 12, 2015). These legislative proposals and hearings informed the content of this bill.

II. EXPLANATION OF THE BILL

The bill comprises two titles. Title I is “Identity Theft and Tax Refund Fraud Prevention,” which includes three subtitles: General Provisions (sections 101 through 104); Administrative Authority to Prevent Identity Theft and Tax Refund Fraud (sections 111 through 115); and Reports (sections 121 through 123). Title II is “Improvements to Electronic Filing of Tax Returns” and includes sections 201 through 206. The specific provisions of the bill are explained below.

TITLE I—IDENTITY THEFT AND TAX REFUND FRAUD PREVENTION

A. GENERAL PROVISIONS

1. Guidelines for stolen identity refund fraud cases (sec. 101 of the bill)

PRESENT LAW

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

The Internal Revenue Service (“IRS”) describes its procedures for addressing both types of fraud in its manual. Its work is coordinated by the IRS’s Identity Protection Program through the auspices of an oversight office.¹

In her 2014 Annual Report to Congress, the National Taxpayer Advocate included a review of fraudulent refund claims that included the theft of a taxpayer’s identity.² The review found that such cases involved multiple issues requiring coordination among several business units of the IRS, and took approximately six

¹ Internal Revenue Service, *Identity Protection Program*, Internal Revenue Manual paragraph 10.5.3, *et seq.* (December 2014).

² National Taxpayer Advocate, “*Identity Theft Case Review Report: A Statistical Analysis of Identity Theft Cases Closed in June 2014*,” 2014 Annual Report to Congress, available at <http://www.taxpayeradvocate.irs.gov/reports-to-congress/2014-annual-report-to-congress/research-studies>.

months to resolve. Identity theft victims were required to deal with multiple persons within the IRS to resolve the issues, either because a case involved multiple business units or was transferred among multiple employees within a business unit.

REASONS FOR CHANGE

The Committee is concerned that the IRS response to the growth of taxpayer identity theft and related fraudulent refund claims has sometimes failed to appreciate the great burden that is placed on victims of identity theft. To ensure that the victims are not subject to undue administrative burdens as they attempt to resolve issues and take measures to protect their identity, the Committee believes it is desirable that the IRS publish casework guidelines that address its handling of identity theft cases and how it can assist victims. To ensure that such guidelines adequately reflect the needs of the victims of identity theft, the Committee believes that the IRS should consult with the National Taxpayer Advocate in the development of the guidelines.

EXPLANATION OF PROVISION

The provision requires that the IRS, in consultation with the National Taxpayer Advocate, develop and implement publicly available casework guidelines for the handling of refund fraud cases that would have the effect of reducing the burdens on victims of identity theft. The guidelines may address both procedures and metrics for determining whether the procedures are successfully implemented. Among the issues to be considered are the standards for opening, assigning, reassigning or closing a case; the average length of time in which a case with an identity theft issue should be resolved; the average length of time a victim entitled to a tax refund may have to wait to receive such refund; and the number of IRS offices and employees with whom a victim should interact to resolve a case.

EFFECTIVE DATE

The provision is effective on the date of enactment, with guidelines to be implemented within six months of the date of enactment.

2. Criminal penalty for misappropriating taxpayer identity in connection with tax fraud (sec. 102 of the bill and secs. 6109 and 7206 of the Code)

PRESENT LAW

The Code³ does not contain civil or criminal penalties specifically targeted at identity theft. Instead, many claims for tax refund-related identity theft are prosecuted as false claims under section 287 of Title 18, and are classified as felonies, generally punishable by a penalty of up to \$250,000 and imprisonment for up to five years. In addition, section 1028A of Title 18 provides for the statutory crime of “aggravated identity theft” in cases where the identity of another individual is used to commit enumerated crimes and gen-

³Except where otherwise stated, all references are to the Internal Revenue Code of 1986, as amended.

erally adds an additional two-year prison term (herein the “Aggravated Identity Theft Statute”). However, that section does not include any tax offenses under the Code and specifically carves out tax-related offenses under Title 18, including conspiracy to defraud the government with respect to claims, false, fictitious or fraudulent claims, or conspiracy.

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

REASONS FOR CHANGE

The Committee believes that the current penalties for criminal tax violations do not appropriately take into account as an aggravating factor the use of a misappropriated identity.

EXPLANATION OF PROVISION

The provision makes it a felony under the Code, punishable by a penalty of up to \$250,000 (\$500,000 for a corporation), imprisonment for up to five years, or both, plus prosecution costs, for a person to misappropriate the taxpayer identity of another person in order to file any return or other document. A taxpayer identity includes any identifying number assigned by the Secretary, specifically including an identity protection personal identification number (“IP PIN”). As a result, the theft of an IP PIN in order to file a return or other document is a felony under the Code.

It is the sense of the Senate that the felony added by this provision should also be added to the list of predicate offenses contained in the Aggravated Identity Theft Statute.

EFFECTIVE DATE

The provision applies to offenses committed on or after the date of enactment.

3. Increased penalty for improper disclosure or use of information by preparers of returns (sec. 103 of the bill and sec. 6713 of the Code)

PRESENT LAW

The Code provides both civil and criminal penalties for a tax return preparer who discloses any information furnished to the preparer for, or in connection with, the preparation of such return or uses such information for any purpose other than to prepare or assist in preparing, any such return. The civil penalty is \$250 for

each unauthorized disclosure or use up to \$10,000 per calendar year.⁴ The corresponding criminal penalty under section 7216 provides that knowing or reckless conduct is a misdemeanor, subject to a fine up to \$1,000, one year of imprisonment, or both, together with the costs of prosecution.

Section 6103(b)(6) defines “taxpayer identity” as the name of the person with respect to whom a return is filed, his mailing address, his taxpayer identifying number or a combination thereof.

REASONS FOR CHANGE

The Committee believes that taxpayer confidence in the trustworthiness of tax return preparers is an important element in tax administration. Those who are entrusted with the sensitive personal data of taxpayers should be held to a high standard, and violation of that trust when a return preparer uses or discloses a client’s return information should be punished accordingly. The Committee does not believe that the current civil or criminal penalties adequately punishes the breach of trust involved in such disclosure.

EXPLANATION OF PROVISION

The provision increases the civil penalty on the unauthorized disclosure or use of information by tax return preparers from \$250 to \$1,000 for cases in which the disclosure or use is made in connection with a crime relating to the misappropriation of another person’s taxpayer identity (“taxpayer identity theft”). The provision also increases the calendar year limitation from \$10,000 to \$50,000. The calendar year limitation is applied separately with respect to disclosures or uses made in connection with taxpayer identity theft.

The provision also increases the criminal penalty for knowing or reckless conduct to \$100,000 in the case of disclosures or uses in connection with taxpayer identity theft.

EFFECTIVE DATE

The provision applies to disclosures or uses on or after the date of enactment.

4. Notification of suspected identity theft (sec. 205 of the bill and new sec. 7529 of the Code)

PRESENT LAW

Section 6103 provides that returns and return information are confidential and may not be disclosed by the IRS, other Federal employees, State employees, and certain others having access to the information except as provided in the Code.⁵ The definition of “return information” is very broad and includes any information gathered by the IRS with respect to a person’s liability or possible liability under the Code for any tax, penalty, interest, fine, forfeiture, or other imposition or offense.⁶ Thus, information gathered

⁴ Sec. 6713.

⁵ Sec. 6103(a).

⁶ Sec. 6103(b)(2). Return information is:

- a taxpayer’s identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer’s return was, is being, or will be examined or subject to other investigation or processing, or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return or

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

As an exception to section 6103's general rule of confidentiality, the Code permits a taxpayer to receive his or her own tax return, and also can receive his or her return information if the Secretary determines that such disclosure would not seriously impair Federal tax administration.⁷ With respect to fraudulent tax returns, if the victim's name and Social Security number ("SSN") are listed as either the primary or secondary taxpayer on a fraudulent return, a victim of identity theft, or a person authorized to obtain the identity theft victim's tax information, may request a redacted copy (one with some information blacked-out) of a fraudulent return that was filed and accepted by the IRS using the identity theft victim's name and SSN.⁸

Under a Privacy Act notice, with respect to investigations other than those involving violations of Title 26, TIGTA may disclose the following information to complainants:

In cases not involving violations of Title 26, under a Privacy Act Notice, TIGTA is allowed to disclose information to complainants, victims, or their representatives (defined to be a complainant's or victim's legal counsel or a Senator or Representative whose assistance the complainant or victim has solicited) concerning the status and/or results of an investigation or case arising from the matters of which they complained and/or of which they were a victim, including, once the investigative subject has exhausted all reasonable appeals, any action taken. Information concerning the status of the investigation or case is limited strictly to whether the investigation or case is open or closed. Information concerning the results of the investigation or case is limited strictly to whether the allegations made in the complaint were substantiated or were not substantiated and, if the subject has exhausted all reasonable appeals, any action taken.⁹

REASONS FOR CHANGE

The Committee is aware that victims of identity theft are often unaware that their identity has been stolen or compromised. As a result, they are unable to take timely measures to limit damage

with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) of any person under this Title for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense,

- any part of any written determination or any background file document relating to such written determination (as such terms are defined in section 6110(b)) which is not open to public inspection under section 6110,

- any advance pricing agreement entered into by a taxpayer and the Secretary and any background information related to such agreement or any application for an advance pricing agreement, and

- any closing agreement under section 7121, and any similar agreement, and any background information related to such an agreement or request for such an agreement.

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

⁷Sec. 6103(e)(1) and (7). The Code also permits the disclosure of returns and return information to such persons or persons the taxpayer may designate, if the request meets the requirements of the Treasury regulations and if it is determined that such disclosure would not seriously impair Federal tax administration. Sec. 6103(c).

⁸See, Internal Revenue Service, Instructions for Requesting Copy of Fraudulent Returns (March 28, 2016), available at <https://www.irs.gov/Individuals/Instructions-for-Requesting-Copy-of-Fraudulent-Returns>.

⁹See 75 Fed. Reg. 20715 (April 20, 2010) (relating to TIGTA Office of Investigation files).

from the theft and to secure their identity against further compromise. The Committee is also aware that successful prosecution of identity thieves requires that the investigators exercise discretion in disclosing information to victims about an ongoing investigation. However, the Committee believes that victims must be provided an opportunity to safeguard their financial information and assets as soon as practicable.

The Committee also is aware that the unauthorized use of the identity of an individual to obtain employment causes severe hardship for the victims of this theft, including accusations of underreporting income and the loss of income-related benefits. Accordingly, to help protect these victims, in making a determination as to whether there has been or may have been an unauthorized use of an identity for purposes of notifying the victim, the IRS should be required to review information obtained from both its own internal processes on data mismatches as well as the information provided to the IRS by the Social Security Administration.

EXPLANATION OF PROVISION

If the Secretary determines that there has been or may have been an unauthorized use of a taxpayer's identity or that of the taxpayer's dependents, the provision requires the Secretary to, without jeopardizing an investigation relating to tax administration, as soon as practicable, notify the taxpayer of such determination, and provide: (1) instructions to the taxpayer about filing a report with law enforcement; (2) the forms the taxpayer must submit to allow investigating law enforcement officials to access the taxpayer's personal information; (3) steps that victims can take to protect themselves from harm caused by the unauthorized use; and (4) an offer of IRS victim protection measures such as an IP PIN that allows returns to be filed securely.

At the time this information is provided (or, if not available at such time, as soon as practicable thereafter), the Secretary shall issue additional notifications to such individual (or such individual's designee) regarding: (1) whether an investigation has been initiated in regards to such unauthorized use; (2) whether the investigation substantiated an unauthorized use of the taxpayer's identity; and (3) whether any action has been taken with respect to the individual who committed the substantiated violation, including whether any referral has been made for criminal prosecution of such individual, and, to the extent such information is available, whether such person has been criminally charged by indictment or information.

For purposes of this provision, the unauthorized use of the identity of an individual includes the unauthorized use of the identity of the individual to obtain employment (herein "employment-related identity theft"). In making a determination as to whether there has been or may have been an unauthorized use of the identity of an individual to obtain employment, the Secretary shall review any information obtained from a statement described in section 6051 or an information return relating to compensation for services rendered other than as an employee, or provided to the IRS by the SSA regarding any statement described in section 6051 which indicates that the Social Security account number provided on such statement or information return does not correspond with

the name provided on such statement or information return or the name on the tax return reporting the income which is included on such statement or information return. This provision requires the Secretary to examine the statements, information returns, and tax returns described in the provision for any evidence of employment-related identity theft, regardless of whether such statements or returns are submitted electronically or on paper. The provision amends the Social Security Act to require the Commissioner of SSA to request information described in the provision not less than annually. The provision also requires that the IRS establish procedures to ensure that identity theft victims are not penalized for underreporting of income as a result of the unauthorized use of their identity.

EFFECTIVE DATE

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

B. ADMINISTRATIVE AUTHORITY TO PREVENT IDENTITY THEFT AND TAX REFUND FRAUD

1. Authority to transfer IRS appropriations to combat tax fraud (sec. 111 of the bill)

PRESENT LAW

Article I, section nine of the Constitution provides that “No money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.” Under section 1301 of Title 31, public funds may be used only for the purposes(s) for which Congress appropriated the funds, except as otherwise provided by law. An officer or employee of the United States government cannot make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation.¹⁰ Such officer or employee violating this rule will be subject to appropriate disciplinary measures, including when circumstances warrant, suspension from duty without pay or removal from office.¹¹ In addition, a Federal officer or employee who knowingly and willfully violates the rule is subject to a fine of up to \$5,000, imprisonment of up to two years, or both.¹²

Section 101 of the Consolidated and Continuing Appropriations Act of 2015¹³ allows the IRS, with advance approval of the Appropriations Committees, to transfer up to five percent of any appropriation:

SEC. 101. Not to exceed 5 percent of any appropriation made available in this Act to the Internal Revenue Service may be transferred to any other Internal Revenue Service appropriation upon the advance approval of the Committees on Appropriations.

¹⁰ 31 U.S.C. sec. 1341.

¹¹ 31 U.S.C. sec. 1349.

¹² 31 U.S.C. sec. 1350.

¹³ Pub. L. No. 113–235.

REASONS FOR CHANGE

In recent years, the IRS has acknowledged providing “abysmal” customer service¹⁴ to taxpayers seeking assistance during tax filing season. The Committee is concerned that the IRS spending priorities may contribute to such poor service, to the extent that customer service funds are reallocated to other spending priorities of the IRS. As a result, the Committee believes it is necessary to place restraints on the IRS discretion to transfer appropriated funds from the purpose for which Congress appropriated the funds to any other agency purposes. The Committee further believes that an exception to such restraint is advisable if the transfer of funds is necessary to enable the IRS to fund its efforts to reduce identity theft and refund fraud.

EXPLANATION OF PROVISION

Under the provision, for any fiscal year, the Commissioner of Internal Revenue (“Commissioner”) may transfer not more than \$10 million to any account of the IRS from amounts appropriated to other IRS accounts. Any amounts so transferred shall be used solely for the purposes of preventing, detecting, and resolving potential cases of tax fraud. The prevention of tax fraud includes educating taxpayers about scams that target them and providing information about how they can protect themselves.

In addition, such transfer of funds can only be made if the Commissioner has determined that customer service to the general public (including telephone operations, forms and publications, and similar taxpayer assistance provided by the IRS) will not be impaired by such transfer. This authority to transfer \$10 million among IRS accounts is in addition to any other permitted transfers of appropriations (such as the five percent referenced above).

EFFECTIVE DATE

The provision is effective on the date of enactment.

2. Streamlined critical pay authority for information technology positions (sec. 112 of the bill)

PRESENT LAW

The IRS is currently subject to the personnel rules and procedures set forth in Title 5 of the United States Code. Under these rules, IRS employees generally are classified under the General Schedule or the Senior Executive Service.

The IRS Restructuring and Reform Act of 1998 (“Restructuring Act”) provided the IRS with certain personnel flexibilities, one of which was the streamlined critical pay authority.¹⁵ This authority was originally provided for 10 years; it was extended on two occasions and ultimately expired on September 30, 2013.¹⁶

¹⁴For example, see prepared remarks of the Commissioner, before the National Press Club, on March 31, 2015, available at <https://www.irs.gov/uac/newsroom/commissioner-koskinen-speech-before-the-national-press-club>.

¹⁵Pub. L. No. 105–206, 112 Stat. 712 (1998).

¹⁶In December 2007, the Consolidated Appropriations Act, 2008, Pub. L. No. 110–161, 121 Stat. 1844, (2008), extended the original deadline to July 23, 2013. Subsequently, the Consolidated and Further Continuing Appropriations Act 2013, Pub. L. No. 113–6, 127 Stat. 198 (2013), extended the deadline to September 30, 2013.

Under the Restructuring Act, the Secretary of the Treasury, or his delegate, was authorized to fix the compensation of, and appoint up to 40 individuals to, designated critical technical and professional positions, provided that: (1) the positions require expertise of an extremely high level in a technical or professional field and are critical to the IRS; (2) exercise of the authority is necessary to recruit or retain an individual exceptionally well qualified for the position; (3) designation of such positions is approved by the Secretary; (4) the terms of such appointments are limited to no more than four years; (5) appointees to such positions are not IRS employees immediately prior to such appointment; and (6) the total annual compensation for any position (including performance bonuses) does not exceed the rate of pay of the Vice President.

These appointments would not be subject to the otherwise applicable requirements under Title 5. All such appointments would be excluded from the collective bargaining unit and the appointments would not be subject to approval of the Office of Management and Budget (“OMB”) or the Office of Personnel Management (“OPM”).

Also, OMB was authorized to approve increases in the pay level for certain critical pay positions requested by the Secretary. These critical pay positions would be critical, technical and professional positions other than those designated under the streamlined authority described above. OMB was authorized to approve requests for critical position pay up to the highest total compensation that does not exceed the rate of pay of the Vice President of the United States.

According to TIGTA, during the years in which it had streamlined critical pay authority, the IRS exercised that authority to fill 168 positions, the majority of which were in the Information Technology function of the IRS.¹⁷

REASONS FOR CHANGE

The Committee is aware that, in order to identify and prevent identity theft or refund fraud, the IRS has focused on improving its efforts in cybersecurity, by providing continuous monitoring of systems, replacing old technology, developing new authentication measures, and working with the private sector to identify best practices. To do so, the IRS must be able to recruit and retain experts from the private sector in highly specialized areas of information technology. The Committee believes that the IRS ability to recruit such experts was aided by the now-expired streamlined critical pay authority, and believes that reauthorization is appropriate.

EXPLANATION OF PROVISION

The provision reinstates streamlined critical pay authority at IRS for positions in its information technology operations that are necessary to ensure the functionality of such operations. Such authority is reinstated for a period starting on the date of enactment through September 30, 2021.

¹⁷TIGTA, *The Internal Revenue Service’s Use of its Streamlined Critical Pay Authority*,” Ref. No. 2015-IE-R001, (December 5, 2014), available at <https://www.treasury.gov/tigta/iereports/2015reports/2015ier001fr.pdf>.

EFFECTIVE DATE

The provision is effective for payments made on or after the date of enactment.

3. Access to the National Directory of New Hires to identify and prevent fraudulent tax return filings and claims for refund (sec. 113 of the bill)

PRESENT LAW

The Office of Child Support Enforcement of the Department of Health and Human Services (“HHS”) maintains the National Directory of New Hires (the “Directory”), which is a database that contains newly-hired employee data from Forms W 4, quarterly wage data from State and Federal employment security agencies, and unemployment benefit data from State unemployment insurance agencies. The Directory was created to help State child support enforcement agencies enforce obligations of parents across State lines.

Under the Social Security Act, the IRS may obtain data from the Directory for the sole purpose of administering the earned income credit (“EIC”)¹⁸ and verifying a taxpayer’s employment that is reported on a tax return.¹⁹ The IRS also may negotiate for access to employment data directly from State agencies responsible for such data, to the extent permitted by the laws of the various States. Generally, the IRS obtains such employment data less frequently than quarterly, due to the significant internal costs it incurs in preparing these data for use.²⁰

REASONS FOR CHANGE

The Committee believes that the more current the information available to the IRS as it attempts to authenticate returns, the more effective its efforts to deter refund fraud can be.

EXPLANATION OF PROVISION

The provision amends the Social Security Act to expand IRS access to the Directory data for the sole purpose of identifying and preventing fraudulent tax return filings and claims for refund. Data obtained by the IRS from the Directory are protected by existing taxpayer privacy law.²¹

EFFECTIVE DATE

The provision is effective on the date of enactment.

¹⁸ Sec. 32(a)(1).

¹⁹ 42 U.S.C. secs. 653 and 653a.

²⁰ See Department of the Treasury, *General Explanations of the Administration’s Fiscal Year 2016 Revenue Proposals*, February 2015, p.238.

²¹ See section 6103(b)(2)(A), providing that information received by or recorded by or furnished to the Secretary with respect to the existence or possible existence of a liability under Title 26 is return information. Section 6103(A) provides that return information is confidential and cannot be disclosed except as authorized. See section 7431, 7213 and 7213A for civil and criminal penalties for the unauthorized disclosure or inspection of return information.

4. Repeal of provision regarding certain tax compliance procedures and reports (sec. 114 of the bill)

PRESENT LAW

Under present law, taxpayers generally are required to calculate their own tax liabilities and submit returns showing their calculations. The IRS Restructuring and Reform Act of 1998 (“Restructuring Act”) requires the Secretary of the Treasury or his delegate (“Secretary”) to study the feasibility of, and develop procedures for, the implementation of a return-free tax system for appropriate individuals for taxable years beginning after 2007.²² The Secretary is required annually to report to the tax-writing committees on the progress of the development of such system. The Secretary was required to make the first report on the development of the return-free filing system to the tax-writing committees by June 30, 2000.

REASONS FOR CHANGE

The Committee believes that the study of implementation of a return-free tax system is of low priority among the challenges facing the IRS. The Committee believes that the broad availability of electronic filing, including free-filing for certain groups of taxpayers, has lessened the value of continuing to require such study and reporting.

EXPLANATION OF PROVISION

The provision repeals section 2004 of the Restructuring Act.

EFFECTIVE DATE

The provision is effective on the date of enactment.

5. Sense of the Senate on strengthened penalties and enforcement for impersonating an IRS official or agent (sec. 115 of the bill)

Under present law, section 912 of Title 18 provides that it is a Federal crime to impersonate an officer or employee of any Federal agency in an attempt to obtain money or anything of value. Such impersonation is punishable by a fine, imprisonment for up to three years, or both. The provision expresses the sense of the Senate that penalties for impersonating an IRS official or agent should be increased and enforced to the fullest extent of the law.

C. REPORTS

1. IRS Report on stolen identity refund fraud (sec. 121 of the bill)

PRESENT LAW

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

REASONS FOR CHANGE

The Committee recognizes that tax-related identity theft is an evolving criminal activity that targets innocent taxpayers nationwide and robs the Treasury of billions of dollars each year. The

²²Pub. L. No. 105–206, sec. 2004.

Committee believes that requiring that the IRS report periodically on its effort to prevent identity theft refund fraud will provide useful information on the scope of the problem and aid development of practical solutions necessary to reduce this growing threat.

EXPLANATION OF PROVISION

The provision requires the IRS to report every two years through September 30, 2026, to the Senate Committee on Finance and the House Committee on Ways and Means on the extent and nature of fraud involving the use of a misappropriated taxpayer identity with respect to claims for refund under the Code based on the most recent data that is available. The first report is due by September 30, 2018.

Each report shall discuss the detection, prevention, and enforcement activities undertaken by the IRS with respect to such fraud, and include: detailing IRS efforts to combat identity theft refund fraud, including an update on the victims' assistance unit; providing an update on IRS efforts and results associated with limiting multiple refunds to the same financial accounts and physical addresses, with appropriate exceptions; and discussing IRS efforts associated with other avenues for addressing identity theft refund fraud (*e.g.*, the hash-based message authentication code).

Each report shall also include the following: an update on the implementation of the bill; information on both the average and maximum amounts of time that elapsed before victims' cases were resolved; analysis of ways to accelerate information matching; and discussion of the need for any further legislation to protect taxpayer resources and information, including preventing tax refund fraud related to the IRS e-Services tools and electronic filing identification numbers.

In addition to the information described above, the initial biannual report must contain an assessment of the agency's progress on identity theft outreach and education to individuals, businesses, State agencies, and other external organizations and the results of a feasibility study on the costs and benefits to enhancing its taxpayer authentication approach to the electronic tax return filing process.

EFFECTIVE DATE

The provision is effective on the date of enactment.

2. Report on status of the Identity Theft Tax Refund Fraud Information Sharing and Analysis Center ("ISAC") (sec. 122 of the bill)

PRESENT LAW

In June 2015, IRS joined with representatives of tax preparation and software firms, payroll and tax financial product processors, and State tax administrators to announce that they would look at establishing a formalized Identity Theft Tax Refund Fraud Information Sharing and Analysis Center ("ISAC") to more aggressively and efficiently share information between the public and private sector to help stop the proliferation of fraud schemes and reduce

the risk to taxpayers.²³ For example, ISAC would provide better data to law enforcement to improve the investigations and prosecution of identity thieves. The IRS does not currently have a center within which the private and public sectors, including State government and subsidiaries thereof can share data and information analysis to protect against identity theft.

The IRS is not currently required to report on the status of ISAC.

REASONS FOR CHANGE

The Committee believes it is desirable to establish a system under which both governmental and private organizations can share and analyze data to detect patterns and warn against potential risks. The Committee is aware that such information-sharing centers have been successful in the fields of financial services and aviation, and believes formation of such a center in the field of tax administration will provide significant gains in detection and prevention of identity theft.

EXPLANATION OF PROVISION

The provision requires the IRS to submit a report to the Senate Committee on Finance and the House Committee on Ways and Means no later than 90 days after the date of enactment that includes information on whether ISAC is fully operational (and, if not, what additional steps are necessary for it to be operational and the best estimate of when ISAC will be operational), what challenges remain in the effective sharing of information, and steps that are being taken to address these challenges.

EFFECTIVE DATE

The provision is effective on the date of enactment.

3. GAO Reports on identity theft and tax refund fraud (sec. 123 of the bill)

PRESENT LAW

The U.S. Government Accountability Office (“GAO”) is not currently required to prepare reports on identity theft and tax refund fraud.

REASONS FOR CHANGE

The Committee believes that a study by GAO of IRS efforts in identity theft outreach and education is desirable to assist the Committee in exercising its oversight responsibility and in identifying necessary legislative action.

EXPLANATION OF PROVISION

The provision requires the GAO to prepare a report to the Senate Committee on Finance and the House Committee on Ways and Means evaluating the clarity of the language the IRS uses for notifying taxpayers of instances of potential and known tax-related

²³ IR-2015-87, June 11, 2015, available at <http://www.irs.gov/uac/Newsroom/IRS-and-Industry-and-States-Take-New-Steps-Together-to-Fight-Identity-Theft-and-Protect-Taxpayers>.

identity theft refund fraud and the IRS systems that generate tax-related identity theft notifications. The report is required to be provided by September 30, 2018.

The provision also requires the GAO to prepare a report to the Senate Committee on Finance and the House Committee on Ways and Means evaluating the IRS's progress on identity theft outreach and education to individuals, businesses, State agencies, and external organizations. The report is required to be provided by September 30, 2020.

The provision further requires the GAO to prepare a report to the Senate Committee on Finance and the House Committee on Ways and Means evaluating the IRS's feasibility study on the costs and benefits to enhancing its taxpayer authentication approach to the electronic tax return filing process. The report is required to be provided by September 30, 2020.

EFFECTIVE DATE

The provision is effective on the date of enactment.

TITLE II—IMPROVEMENTS TO ELECTRONIC FILING OF TAX RETURNS

1. Study on feasibility of blocking electronically-filed tax returns (sec. 201 of the bill)

PRESENT LAW

The Restructuring Act established a Congressional policy to promote the paperless filing of Federal tax returns and set a goal for the IRS to have at least 80 percent of all Federal tax and information returns filed electronically by 2007.²⁴ Section 2001(b) of the Restructuring Act requires the IRS to establish a 10-year strategic plan to eliminate barriers to electronic filing.

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

Individuals who either report to the IRS that they are victims of identity theft or who the IRS determines independently are victims of identity theft are eligible to receive an IP PIN (a special, six-

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

²⁵Sec. 6011(e).

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

digit identity protection personal identification number) to use as an additional authentication feature with their social security number, as a taxpayer identifying number on returns the next filing season. If the taxpayer files electronically, an additional, e-file PIN is also required.

REASONS FOR CHANGE

The Committee is aware that numerous taxpayers who have experienced identity theft that was accomplished by electronically filing a false return may wish to elect to preclude any future electronic filing of a return on their behalf. It is not known how widely shared that sentiment is, nor is it clear whether such an election could be honored. The Committee requires more information about the feasibility of such an election and its effectiveness in preventing further violations.

EXPLANATION OF PROVISION

The provision requires the Secretary of the Treasury (or his or her delegate) to provide a feasibility study to the Senate Committee on Finance and the House Committee on Ways and Means describing a program under which a person who has filed an identity theft affidavit with the Secretary may elect to prevent the processing of any Federal tax return submitted in an electronic format by anyone purporting to be that taxpayer. The study is due within 180 days after the date of enactment and should also include a recommendation on whether to implement such a program.

EFFECTIVE DATE

The provision is effective on the date of enactment.

2. Enhancements to IRS PIN program (sec. 202 of the bill)

PRESENT LAW

In 2011, the IRS launched a pilot program to test the IP PIN that authenticates a return filer as the legitimate taxpayer at the time the return is filed. The IP PIN allows affected taxpayers to avoid delays in filing returns and receiving refunds. For the 2014 filing season, the IRS issued IP PINs to more than 1.2 million taxpayers who had identity theft markers on their tax accounts.²⁷ The IRS also started a limited pilot program in January 2014 whereby taxpayers who obtained an electronic filing PIN through an IRS authentication website and live in the District of Columbia, Florida, or Georgia are provided an opportunity to obtain an IP PIN.²⁸ The IRS verified the presence of the IP PIN at the time of filing, and rejected returns associated with a taxpayer's account where an IP PIN had been assigned but was missing.

²⁷ Inspector General for Tax Administration, Department of the Treasury, *Identity Protection Personal Identification Numbers Are Not Provided to All Eligible Taxpayers* (TIGTA 2014-40-086), September 24, 2014, available at <http://www.treasury.gov/tigta/auditreports/2014reports/201440086fr.html>.

²⁸ Internal Revenue Service, *IP PIN pilot continues in Georgia, Florida and the District of Columbia*, available at <http://www.irs.gov/Individuals/Identity-Protection-PIN-Pilot-Program>.

REASONS FOR CHANGE

The Committee is aware that the use of an IP PIN is an effective means of preventing identity theft refund fraud via an electronically filed return. The Committee believes that the success of the pilot program for IP PINs warrants expansion of the program beyond the residents of the District of Columbia, Florida and Georgia and persons who have already been subject to identity theft.

EXPLANATION OF PROVISION

The provision requires the Secretary of the Treasury (or his or her delegate) to issue an IP PIN to any individual requesting such IP PIN after the individual's identity has been verified to the satisfaction of the Secretary.

EFFECTIVE DATE

The provision is effective on the date of enactment and is required to be available by July 1, 2019.

3. Increasing electronic filing of returns (sec. 203 of the bill)

PRESENT LAW

In general

The Restructuring Act states a Congressional policy to promote the paperless filing of Federal tax returns. Section 2001(a) of the Restructuring Act set a goal for the IRS to have at least 80 percent of all Federal tax and information returns filed electronically by 2007.²⁹ Section 2001(b) of the Restructuring Act requires the IRS to establish a 10-year strategic plan to eliminate barriers to electronic filing.

Present law requires the Secretary to issue regulations regarding electronic filing and specifies certain limitations on the rules that may be included in such regulations.³⁰ The statute requires that Federal income tax returns prepared by specified tax return preparers be filed electronically,³¹ and that all partnerships with more than 100 partners be required to file electronically. For taxpayers other than partnerships, the statute prohibits any requirement that persons who file fewer than 250 returns during a calendar year file electronically. With respect to individuals, estates, and trusts, the Secretary may permit, but generally cannot require, electronic filing of income tax returns. In crafting any of these required regulations, the Secretary must take into account the ability of taxpayers to comply at a reasonable cost.

The regulations require corporations that have assets of \$10 million or more and file at least 250 returns during a calendar year to file electronically their Form 1120/1120S income tax returns (U.S. Corporation Income Tax Return/U.S. Income Tax Return for an S Corporation) and Form 990 information returns (Return of

²⁹The Electronic Tax Administration Advisory Committee, the body charged with oversight of IRS progress in reaching that goal reported that e-filing by individuals exceeded 80 percent in the 2013 filing season, but projected an overall rate of 72.8 percent based on all Federal returns. See Electronic Tax Administration Advisory Committee, *Annual Report to Congress*, June 2013, IRS Pub. 3415, page 6.

³⁰Sec. 6011(e).

³¹Section 6011(e)(3)(B) defines a "specified tax return preparer" as any return preparer who reasonably expects to file more than 10 individual income tax returns during a calendar year.

Organization Exempt from Income Tax) for tax years ending on or after December 31, 2006. In determining whether the 250 returns threshold is met, income tax, information, excise tax, and employment tax returns filed within one calendar year are counted.

REASONS FOR CHANGE

Consistent with the policy expressed in the Restructuring Act, the Committee supports paperless filing as the preferred and most convenient means of filing Federal tax and information returns. Electronic filing produces a number of benefits both for taxpayers and the IRS, including shorter processing times, fewer errors, and better data. The Committee believes that the efficiencies and cost savings achieved through electronic filing justify expanding such requirements. For example, electronic filing has enabled the IRS to close two processing centers, and save 1,600 staff years of work. The Committee is aware that present law restricts the IRS ability to expand the scope of returns that are required to be filed electronically. The Committee believes that the widespread adoption of computer technology since the Restructuring Act has reduced the additional burden that mandatory e-filing imposes on taxpayers.

EXPLANATION OF PROVISION

The provision relaxes the current restrictions on the authority of the Secretary to mandate electronic filing based on the number of returns required to be filed by a taxpayer in a given taxable period. First, it phases in a reduction in the threshold requirement that taxpayers have an obligation to file a specified number of returns and statements during a calendar year in order to be subject to a regulatory mandate. The threshold is reduced from 250 to 200 for calendar year 2019, from 200 to 150 for calendar year 2020, from 150 to 100 for calendar year 2021, from 100 to 50 for calendar year 2022, and from 50 to 20 for calendar years thereafter.

Second, the provision requires that any individual income tax return prepared and filed by a tax return preparer be filed electronically, regardless of the number of returns filed by such return preparer. The Secretary is authorized to waive this requirement if a tax return preparer applies for a waiver and demonstrates that the inability to file electronically is due to technological constraints such as lack of internet availability in the geographic location in which the return preparation business is operated.

EFFECTIVE DATE

The provision is effective for returns with a due date, determined without regard to extensions, after December 31, 2017.

4. Internet platform for Form 1099 filings (sec. 204 of the bill)

PRESENT LAW

The Code does not presently require the IRS to make available an internet platform for the preparation or filing of information returns, such as the series, Form 1099.

REASONS FOR CHANGE

The Committee believes that it is desirable to provide a simple and secure manner for small businesses to file critical tax information returns electronically. The Committee further believes that such a secure manner of filing can be modeled on the online platform, SSA Business Services Online. The Committee believes that an online platform for submitting information returns to the IRS, similar to SSA Business Services Online, could improve compliance of small business taxpayers while reducing their administrative burden. Businesses would be able to prepare and file information returns such as IRS Form 1099–MISC, Miscellaneous Income, online while preparing the payee statements and creating necessary business records.

EXPLANATION OF PROVISION

The provision requires the Secretary of the Treasury (or his or her delegate) to make available, by January 1, 2021, an internet website or other electronic medium (the “website”), similar to the Business Services Online Suite of Services provided by the SSA.³³ The website will allow taxpayers, with access to resources and guidance provided by the IRS, to prepare, file, and distribute Forms 1099, and create and maintain taxpayer records. The provision also requires the website to be available, by January 1, 2019, in a partial form that will allow taxpayers to prepare, file, and distribute Forms 1099–MISC, and create and maintain taxpayer records.

EFFECTIVE DATE

The provision is effective on the date of enactment.

5. Requirement that electronically prepared paper returns include scannable code (sec. 205 of the bill)

PRESENT LAW

Every citizen, whether residing in or outside the United States, and every resident of the United States within the meaning of section 7701(b) must file an income tax return if the individual has income that equals or exceeds the exemption amount.³⁴ Treasury regulations require individual taxpayers to make this return using a Form 1040, U.S. Individual Income Tax Return.³⁵ Similarly, every corporation subject to Federal income tax, regardless of the amount of its gross or taxable income for the taxable year, is required to file a return.³⁶

In 1998, Congress declared a policy that (1) paperless filing should be the preferred and most convenient means of filing Federal tax and information returns, (2) the IRS’s goal should be to receive at least 80 percent of all returns electronically by 2007, and (3) the IRS should encourage private-sector competition to increase electronic filing.³⁷ Section 6011(f), also enacted in 1998, authorizes

³³ Available at <http://www.ssa.gov/bsowelcome.htm>.

³⁴ Sec. 6012(a)(1); Treas. Reg. sec. 1.6012–1(a)(1).

³⁵ Treas. Reg. sec. 1.6012–1(a)(6).

³⁶ Sec. 6012(a)(2).

³⁷ The Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105–206, sec. 2001.

the Department of the Treasury to advertise the benefits of electronic tax administration programs and to make payment of appropriate incentives for electronically-filed returns.

The Department of the Treasury generally is authorized to prescribe regulations providing standards for determining which returns must be filed on magnetic media or in another machine-readable form. However, except under certain circumstances, the Department of the Treasury “may not require returns of any tax imposed by subtitle A on individuals, estates, and trusts, to be other than on paper forms supplied by the Secretary.”³⁸

REASONS FOR CHANGE

Although the policy of Congress favoring paperless filing as the preferred means of filing Federal tax and information returns, and urging private-sector competition to increase electronic filing³⁹ has led to greatly increased use of electronic filing, and despite the greatly increased use of computers since 1998, many taxpayers continue to prefer to print and file their returns on paper with the IRS, which must then manually transcribe the data on the paper returns into its computer databases. Of the returns filed on paper, many were prepared electronically but printed and mailed to the IRS on paper. The Committee understands that converting paper returns into an electronic format would significantly reduce the high costs to process paper-filed returns (including the cost of hiring people during filing season to enter data from paper-filed tax returns into its databases), and error rates resulting from key-punch mistakes when inputting information from the paper tax returns into IRS computers. Both TIGTA and GAO have recommended use of scanning technology on paper returns. The Committee believes that the reduced costs and error rates warrant requiring that returns prepared using software be printed with an embedded code that would ensure that the data on the return could be input into the IRS systems by scanning. The Committee understands that some of the fillable forms on the IRS website that taxpayers now use already include such a code on them.

EXPLANATION OF PROVISION

The provision requires that taxpayers who prepare their returns electronically, but print and file the returns on paper must print their returns with a scannable code. A scannable code enables the IRS to convert paper-filed tax returns into an electronic format using scanning technology.

EFFECTIVE DATE

The provision is effective for tax returns with a due date, determined without regard to extensions, after December 31, 2017.

³⁸Sec. 6011(e)(1).

³⁹Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105–206, sec. 2001.

6. Authentication of users of electronic services accounts (sec. 206 of the bill)

PRESENT LAW

The IRS has developed a suite of web-based products, called e-Services Online Tools for Tax Professionals, which provides multiple electronic products and services to tax professionals.

REASONS FOR CHANGE

The Committee is aware that multi-factor authentication of the identity of users of online accounts increases the security of datasets. The Committee also believes that taxpayers are entitled to demand that the IRS carefully guard the sensitive information entrusted by taxpayers to the IRS from intruders.

EXPLANATION OF PROVISION

The provision requires the IRS to verify the identity of any individual opening an e-Services account before he or she is able to use such services.

EFFECTIVE DATE

The provision is effective not later than 180 days after the date of enactment.

III. BUDGET EFFECTS OF THE BILL

A. COMMITTEE ESTIMATES

In compliance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the following statement is made concerning the estimated budget effects of the revenue provisions of the “Stolen Identity Refund Fraud Prevention Act” as reported.

The bill is estimated to have the following effects on Federal budget receipts for fiscal years 2016 through 2026:

Provision	Effective	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2016-21	2016-26
II. Improvements to Electronic Filing of Tax Returns														
1. Study on feasibility of blocking electronically-filed tax returns.....														
	nlt 180da DOE:													
2. Enhancements to IRS PIN program.....	[5]													
3. Increasing electronic filing of returns.....	[6]													
4. Internet platform for Form 1099 filings.....	[7]													
5. Requirement that electronically prepared paper returns include a scannable code.....	[8]													
6. Authentication of users of electronic services accounts.....	180da DOE													
Total of Improvements to Electronic Filing of Tax Returns.....														
NET TOTAL			[2]	[2]	[2]	[2]	[2]	[2]	[2]	[2]	[2]	[2]	[2]	[2]
Joint Committee on Taxation														

NOTE: Details may not add to totals due to rounding.

Legend for "Effective" column:

- dmg = determinations made after
- DOE = date of enactment
- doao/a = disclosures or uses on or after
- nlt = not later than
- oco/a = offenses committed on or after
- pno/a = payments made on or after
- 90da = 90 days after
- 180da = 180 days after

[1] Effective on the date of enactment, with guidelines to be implemented within six months of the date of enactment.
 [2] Gain of less than \$500,000.
 [3] The proposal would require five bi-annual reports, the first of which would be required to be provided by September 30, 2018.
 [4] Effective not later than September 30, 2018, for report on notification related to stolen identity refund fraud, and not later than September 30, 2020, for report on taxpayer authentication and identity theft outreach and education.
 [5] Effective on the date of enactment and required to be available on a nation-wide basis by July 1, 2019.
 [6] Effective for returns with a due date, determined without regard to extensions, after December 31, 2017.
 [7] Website to be made available not later than January 1, 2021, and available in a partial form not later than January 1, 2019.
 [8] Effective for tax returns with a due date, determined without regard to extensions, after December 31, 2017.

B. BUDGET AUTHORITY AND TAX EXPENDITURES

Budget authority

In compliance with section 308(a)(1) of the Congressional Budget and Impoundment Control Act of 1974 (“Budget Act”),⁴⁰ the Committee states that no provisions of the bill as reported involve new or increased budget authority.

Tax expenditures

In compliance with section 308(a)(1) of the Budget Act, the Committee states that the provisions of the bill do not involve increased tax expenditures (see revenue table in part A., above).

C. CONSULTATION WITH CONGRESSIONAL BUDGET OFFICE

In accordance with section 403 of the Budget Act, the Committee advises that the Congressional Budget Office has not submitted a statement on the bill. The letter from the Congressional Budget Office will be provided separately.

IV. VOTES OF THE COMMITTEE

Motion to report the bill

In compliance with paragraph 7(b) of rule XXVI of the Standing Rules of the Senate, the Committee states that, with a majority and quorum present, the “Stolen Identity Refund Fraud Prevention Act,” as modified by the Chairman’s modifications to the mark and amended by the Committee, was ordered favorably reported by voice vote on April 20, 2016.

Votes on amendments

The Committee considered two amendments, as follows:

1. An amendment by Senators Wyden, Cardin, Carper, Warner and Stabenow to authorize the Secretary of Treasury to develop minimum standards for paid return preparers was defeated by a roll call vote, 12 ayes, 13 nays, as follows:

Ayes: Wyden, Schumer (proxy), Stabenow, Cantwell, Nelson, Menendez, Carper (proxy), Cardin, Brown, Bennet (proxy), Case, Warner (proxy).

Nays: Hatch, Grassley, Crapo, Roberts, Enzi (proxy), Cornyn, Thune (proxy), Burr (proxy), Isakson, Toomey (proxy), Coats, Heller (proxy), Scott (proxy).

Not voting: Portman

2. An amendment by Senator Coats to require that the IRS provide notice to victims of employment-related identity theft was approved by voice vote.

V. REGULATORY IMPACT AND OTHER MATTERS

A. REGULATORY IMPACT

Pursuant to paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following statement concerning the regulatory impact that might be incurred in carrying out the provisions of the bill as amended.

⁴⁰Pub. L. No. 93-344.

Impact on individuals and businesses, personal privacy and paperwork

The provisions of the bill are not expected to impose additional administrative requirements or regulatory burdens on individuals or businesses.

The provisions of the bill do not impact personal privacy.

B. UNFUNDED MANDATES STATEMENT

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104-4).

The Committee has determined that the tax provisions of the reported bill do not contain Federal private sector mandates or Federal intergovernmental mandates on State, local, or tribal governments within the meaning of Public Law 104-4, the Unfunded Mandates Reform Act of 1995.

C. TAX COMPLEXITY ANALYSIS

Section 4022(b) of the Internal Revenue Service Reform and Restructuring Act of 1998 requires the staff of the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Treasury Department) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the Senate Committee on Finance, the House Committee on Ways and Means, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code and has widespread applicability to individuals or small businesses. The staff of the Joint Committee on Taxation has determined that there are no provisions that are of widespread applicability to individuals or small businesses.

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In the opinion of the Committee, it is necessary in order to expedite the business of the Senate, to dispense with the requirements of paragraph 12 of rule XXVI of the Standing Rules of the Senate (relating to the showing of changes in existing law made by the bill as reported by the Committee).

VII. ADDITIONAL VIEWS

ADDITIONAL VIEWS OF SENATORS WYDEN, NELSON, BROWN, AND WARNER

We respectfully file our additional views to the Stolen Identity Refund Fraud Prevention Act, which was approved by the Senate Finance Committee on April 20, 2016. We appreciate the work of Chairman Hatch and committee staff for holding the mark-up and bringing this package together and to Senators Brown, Cardin, Grassley, Nelson, and Thune for contributing their valuable legislative proposals to this effort. We wish to begin by recognizing that the Finance committee considered several important, bipartisan proposals pertaining to identity theft and taxpayer protection. Every new headline about hackers and crooks stealing taxpayer dollars and personal data is a reminder that there is a lot more to be done to protect taxpayers from cyber harm. There's the recent example of the hack into the "Get Transcript" system at the IRS. Lax security on the IRS system left the front door open to cyber criminals, who stole tax return data on three quarters of a million taxpayers. Then when the IRS distributed special Identity Protection Personal Identification Numbers to the victims, it opened the back door by again using a security system that did not keep fraudsters and criminals out.

That is why this package restores streamline critical pay authority, which the IRS can use to build and maintain a top-notch team of tech experts to beat back hackers and protect taxpayer data. It also will be much easier to flag and crack down on fraudulent returns by making better use of the National Database of New Hires. Those are positive, bipartisan steps that we fought to include in this legislation. But in our view, there is a glaring hole in this package as it stands now, and politics have gotten in the way of fixing it.

So it is very unfortunate for the American people that when this legislation comes for consideration before the Senate, it will not include minimum standards for paid tax return preparers that would allow us to crack down on crooked, fraudulent, and incompetent preparers. Instead, it will be one more example of lawmakers in Congress willfully failing to protect vulnerable taxpayers.

Right now there are *no minimum national standards whatsoever* for paid tax return preparers. There are nearly half a million registered preparers who don't claim to have professional credentials. And last year alone, these paid tax preparers submitted *more than 75 million returns*—well more than half of all returns filed with the IRS. Finance Democrats believe a system that has taxpayers handing over their Social Security and bank account numbers to people who meet no standards at all is ripe for fraud and abuse.

Study after study has found high rates of errors in tax returns filed by paid preparers who were not required to meet minimum competency standards. By comparison, preparers in states like Oregon, Maryland, and New York with minimum standards have lower error rates than paid preparers nationally. Even unpaid volunteers required to meet minimum standards outperform paid tax preparers.

We can all agree that Congress has a clear responsibility to protect honest taxpayers by pursuing legislative policies that improve the security of their tax information and simplify the filing and refund process. Delivering on that responsibility, Finance Democrats and Republicans came together last fall and agreed on a bipartisan bill, “The Preventing Identity Theft and Tax Refund Fraud Act”, designed to curb identity theft and stop unscrupulous tax preparers—addressing two of the top scams on the annual IRS “Dirty Dozen” list. Since then, incidents of tax refund fraud have only grown in number and severity, hurting Americans across the country and costing taxpayers millions of dollars.

An eastern Pennsylvania man who ran Dunmore Cash Checking, serving a largely Hispanic clientele, used 250 stolen identities to claim \$1.6 million in tax refund checks according to the Associated Press. Indiana reported that 12% of tax refund dollars requested in 2014 were fraudulent according to the Indianapolis Star. The Maryland comptroller was recently forced to stop accepting returns from 65 questionable tax preparation firms at 68 locations in the state. And one California man who ran a string of tax preparation businesses ripped off taxpayers to the tune of \$14 million before he was banned from the industry by a federal court.

Just in the last couple of months, indictments have been handed down to accused fraudsters in New Mexico, Texas, Maryland, Rhode Island, New York, Alabama and elsewhere. And those indictments stem from crimes committed three, four and five years ago in some cases. That’s often how long it takes to bring criminals to justice in this shadowy environment, and those are just some of the cases that have been uncovered. In our view, what should scare everybody most is that there’s no good way of figuring out just how much money criminals are pocketing. There’s no way to tell exactly how many Americans have been victimized, or to keep the bad actors out from the beginning.

The bottom line is that Congress has left the door open to let fraudsters and organized criminals help themselves to taxpayer funds. Their victims are often some of the most vulnerable people in this country—working families who struggle to make ends meet and turn to paid tax preparers every spring. Meanwhile, tax lawyers and accountants who typically work with wealthier Americans and business owners go through years of schooling and rigorous certifications. They don’t operate in the shadows the way criminal paid preparers do because there are strong rules that protect their clients. So when it comes to getting tax help, the well-off are kept safe while the less-fortunate are thrown to the wolves.

Taxpayers who have been victimized—either by tax-based identity theft or a fraudulent tax preparer—are left reeling, spending on average four months and hundreds of dollars to deal with the aftermath of having their returns misappropriated. The victims of

fraud and incompetence are not just Democrats, Republicans or Independents, and they are not exclusive to blue states or red states. This issue has nothing at all to do with politics. This has everything to do with the Americans we represent getting ripped off by criminals, and Congress sitting on its hands instead of doing something to stop it.

Let's be clear, setting minimum standards for tax return preparers is not a wacky, new idea from the left side of the aisle. A small handful of states have rules in place, including states like Maryland, Oregon, and New York. Under Democratic and Republican leadership in the recent past, this committee supported legislation giving the green light for minimum standards. Unfortunately, for unrelated reasons, those efforts never got a bill to the President's desk.

Today, we are filing two bills that we reported out of Committee. Part of the second bill writes into permanent law the Volunteer Income Tax Assistance program, or VITA, which helps some low-income Americans file their taxes. To protect these taxpayers near the bottom of the income scale, VITA does require testing and minimum standards for its volunteers. So in our view, there is a clear double standard at play. We can see no reason why minimum protective standards are good enough for a modest program like VITA, but they are not good enough for paid tax preparers used by millions nationwide.

Finance Democrats offered an amendment that would end this double standard and allow for minimum standards to be set. Our amendment differed from previous proposals in two key ways. First, we went to great lengths to address all the concerns that members heard from outside groups, including those representing certified public accountants. After the work we put in to address those concerns, they fully supported our amendment. Second, some Republican Finance members had indicated they opposed setting minimum standards because IRS would oversee the process. So the amendment left the IRS out of the equation. The Treasury Department can handle setting the standards and making sure these standards are met once they are in place. And in fact, our amendment moves the office that handles these issues out of the IRS entirely.

In this way, working collaboratively with stakeholders, Finance Democrats crafted a minimum standards amendment that enjoys broad support from trade groups and advocates alike. For example, major supporters of our amendment include the American Institute of Certified Public Accountants, the National Association of Enrolled Agents, the National Society of Accountants, the Leadership Conference on Civil and Human Rights, the Center on Budget and Policy Priorities, as well as a host of state and local consumer advocates and citizen action organizations.

Unfortunately, our colleagues across the aisle decided to vote the amendment down rather than support it at our April 20th markup. While we still voted for the Stolen Identity Refund Fraud Protection Act to pass out of Committee, we hope this issue can be reconsidered, either during the debate on these bills or at another early opportunity. Let's set aside our opinions of the IRS. Let's set aside politics. Congress has the ability to protect people from finan-

cial ruin. We therefore urge our colleagues to support requiring minimum standards for professional tax return preparation.

