

**DESCRIPTION OF THE CHAIRMAN'S FIRST MODIFICATION
TO THE CHAIRMAN'S MARK OF A BILL TO
PREVENT IDENTITY THEFT AND TAX REFUND FRAUD**

Scheduled for Markup
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SENATE COMMITTEE ON FINANCE
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Prepared by the Staff
of the
JOINT COMMITTEE ON TAXATION



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INTRODUCTION

The Senate Committee on Finance has scheduled a markup of a proposal to prevent identity theft and tax refund fraud.¹ This document,² prepared by the staff of the Joint Committee on Taxation, provides a description of the Chairman's modification of the proposals, additional proposals, and proposals removed from the Chairman's mark.

¹ Unless otherwise stated, all section references are to the Internal Revenue Code of 1986, as amended.

² This document may be cited as follows: Joint Committee on Taxation, *Description of the Chairman's First Modification to the Chairman's Mark of a Bill to Prevent Identity Theft and Tax Refund Fraud* (JCX-27-16), April 18, 2016. This document can also be found on the Joint Committee on Taxation website at www.jct.gov.

A. Modifications to the Chairman's Mark

1. Modification to require the IRS to prepare a report on identity theft refund fraud

The Chairman's modification adds to the information required in the IRS's reports on identity theft refund fraud, information on both the average and maximum amounts of time that elapsed before victims' cases were resolved.

The Chairman's modification adds to the information required in the IRS's first biannual report on identity theft refund fraud, an assessment of the agency's progress on identity theft outreach and education to the private sector, State agencies, and external organizations.

The Chairman's modification adds to the information required in the IRS's first biannual report on identity theft refund fraud, a feasibility study on the costs and benefits to enhancing its taxpayer authentication approach to the electronic tax return filing process.

2. Modification of criminal penalty for misappropriating taxpayer identity in connection with tax fraud

The Chairman's modification adds theft of an identity protection personal identification number ("IP PIN") in order to file a return or other document as a felony crime under the tax code. The modification also expresses the sense of the Senate that this theft be added to the list of predicate offenses contained in the Aggravated Identity Theft Statute.

3. Modification to authority to transfer IRS appropriations to combat tax fraud

The Chairman's modification clarifies that preventing tax fraud includes educating taxpayers about scams that target them and providing information about how they can protect themselves.

4. Modification to taxpayer notification of suspected identity theft

The Chairman's modification provides an additional requirement that, as part of the IRS's notification to the taxpayer, the IRS is to include in that communication: (1) instructions to the taxpayer about filing a police report; and (2) the forms the taxpayer must submit to allow investigating law enforcement officials to access the taxpayer's personal information.

5. Modification to enhancements to the IRS PIN program

The Chairman's modification changes the effective date of the proposal so that it is effective on the date of enactment and required to be available on a nation-wide basis by July 1, 2019.

6. Modification to increase electronic filing of returns

The Chairman's modification changes the dates for the phased 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. Specifically,

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.

The Chairman's modification also changes the effective date of the proposal so that it is effective for returns with a due date, determined without regard to extensions, after December 31, 2017.

7. Modification to internet platform for Form 1099 filings

The Chairman's modification changes the proposal to require that the Secretary (or his or her delegate) make available, by January 1, 2021, an Internet website or other electronic medium, similar to the Business Services Online Suite of Services provided by the Social Security Administration.

The Chairman's modification changes the proposal to require that the website be available, by January 1, 2019, in a partial form that will allow taxpayers to prepare, file, and distribute Forms 1099-MISC.

8. Modification to requirement that electronically-prepared paper returns include a scannable code

The Chairman's modification changes the effective date of the proposal so that it is effective for tax returns with a due date, determined without regard to extensions, after December 31, 2017.

9. Modification to streamlined critical pay authority for information technology positions

The Chairman's modification changes the proposal so as to reinstate streamlined critical pay authority at the IRS to certain designated information technology positions for a period starting on the date of enactment through September 30, 2021.

B. Additions to the Chairman's Mark

1. Require the IRS to report on the status of the Refund Fraud Information Sharing and Assessment Center ("ISAC")

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 Refund Fraud Information Sharing and Assessment 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.³

³ 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>.

For example, ISAC would provide better data to law enforcement to improve the investigations and prosecution of identity thieves.

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

Description of Proposal

The proposal would require 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 proposal is effective on the date of enactment.

2. Require the GAO to prepare various reports on identity theft and tax refund fraud

Present Law

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

Description of Proposal

The proposal 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 the private sector, state agencies, and external organizations. The report would be required to be provided by September 30, 2020.

The proposal 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 feasibility study on the costs and benefits to enhancing its taxpayer authentication approach to the electronic tax return filing process. The report would be required to be provided by September 30, 2020.

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

Effective Date

The proposal is effective on the date of enactment.

3. Sense of the Senate to express support for strengthened penalties and enforcement for impersonating an IRS official or agent

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 proposal 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. Deletions from the Chairman's Mark

1. Extend the authority to require a truncated Social Security Number ("SSN") on Form W-2

The Chairman's modification removes the proposal to revise section 6501 to require employers to include an "identifying number" for each employee, rather than an employee's SSN, on Form W-2. This proposal was recently enacted.⁴

2. Modify due dates for filing certain information returns

The Chairman's modification removes the proposal to modify the due dates for filing certain information returns. A substantially similar proposal was recently enacted.⁵

3. Safe harbor for *de minimis* errors on information returns, payee statements, and withholding

The Chairman's modification removes the proposal to create a safe harbor from the application of the penalty for failure to file a correct information return and the penalty for failure to furnish a correct payee statement in circumstances in which the information return or payee statement is otherwise correctly filed but includes a *de minimis* misstatement of the amount required to be reported on such return or statement. A substantially similar proposal was recently enacted.⁶

4. Clarify the use of credentials by Enrolled Agents

The Chairman's modification removes the proposal to amend Title 31 of the U.S. Code to permit enrolled agents meeting the Secretary's qualifications to use the designation "enrolled agent," "EA," or "E.A." This proposal was recently enacted.⁷

⁴ Section 409 of the Protecting Americans from Tax Hikes Act of 2015 (Division Q of Pub. L. No. 114-113) ("PATH Act of 2015").

⁵ Section 201 of the PATH Act of 2015.

⁶ Section 202 of the PATH Act of 2015.

⁷ Section 410 of the PATH Act of 2015.