



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

SMALL BUSINESS / SELF-EMPLOYED DIVISION

December 19, 2013

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MEMORANDUM FOR DIRECTOR, ADVISORY AND INSOLVENCY
DIRECTORS, FIELD COLLECTION AREA OPERATIONS

FROM: Dretha Barham /s/ *Dretha Barham*
Director, Collection Policy

SUBJECT: Reissuance of Interim Guidance: Return Preparer Fraud or
Misconduct

The purpose of this memorandum is to re-issue the original Interim Guidance (IG) Memorandum dated June 5, 2012, with control number SBSE-05-0612-035, titled "Return Preparer Fraud or Misconduct," most recently reissued under IG SBSE-05-0613-0034, and dated June 3, 2013. This memorandum provides guidance on required actions when a taxpayer alleges Return Preparer Fraud or Misconduct. New Internal Revenue Manual (IRM) 5.1.27, *Return Preparer Fraud or Misconduct*, will be issued to include this guidance.

A taxpayer becomes a victim of Return Preparer Fraud or Misconduct when the tax return preparer completes a return for a taxpayer and without the taxpayer's knowledge makes changes to the return, which results in an improper refund to the preparer or a third party. Taxpayers may not know there is an issue until the IRS contacts them about the return well after refunds have been issued.

When a taxpayer claims he or she has no knowledge of the improper return entries and did not complete the return, we must treat the taxpayer as a potential victim of Return Preparer Fraud or Misconduct. Collection activity must cease on liabilities assessed against the taxpayer in connection with a refund or portion of a refund that the taxpayer never received.

When a taxpayer alleges Return Preparer Fraud or Misconduct:

- Temporarily suspend all collection actions on the affected tax modules. Specifically, this includes:
 - Issuing new levies, including systemic Federal Payment Levy Program (FPLP) levies (See IRM 5.11.7.2.6, *Blocking or Releasing FPLP Levy*).
 - Filing any new Notices of Federal Tax Liens (NFTL).
 - Issuing Letter 1058, *Notice of Intent to Levy and Notice of Your Right to a Hearing*, or Letter 3174, *New Warning of Enforcement*.
 - Initiating seizure action.
- Be sensitive to the adverse impact that being a victim of Return Preparer Fraud or Misconduct may have upon the taxpayer and his or her ability to pay.

There are many variations of Return Preparer Fraud or Misconduct. For example, some cases may involve the preparer filing the return on paper, where the alterations to the return occur after the taxpayer has approved the return. In other cases, however, the taxpayer has indicated approval of the return by signing Form 8879, *IRS e-file Signature Authorization*, and then the preparer alters the return before electronically filing it.

In some cases, the preparer may split the refund by using Form 8888, *Allocation of Refund (Including Savings Bond Purchases)*, so that the taxpayer receives the amount of refund he or she is expecting, while the preparer asks the IRS to direct deposit the portion of the refund resulting from the inflated items into his or her own bank account or other account over which the preparer exercised control. In other cases, the preparer may have the entire refund direct-deposited into his or her account, and then wire transfer the amount the taxpayer was expecting into the taxpayer's bank account.

When a taxpayer appears to be a victim of Return Preparer Fraud or Misconduct, set a deadline allowing the taxpayer a reasonable amount of time to provide a completed Form 14157-A, *Tax Return Preparer Fraud or Misconduct Affidavit*, signed under penalties of perjury along with the following documentation:

- [Form 14157](#), *Return Preparer Complaint*.
- Tax return preparer information, including name, address, taxpayer identification number (name and address information must be provided).
- Signed copy of the tax return provided to the taxpayer by the return preparer. This is the unaltered tax return presented to the taxpayer.
- If the taxpayer does not have a copy of the return provided by the preparer, they must provide a signed copy of the return as intended to be filed.
- Copy of the taxpayer's bank statement reflecting the refund amount received by direct deposit, if applicable.
- Copy of the paper check(s) reflecting the amount received by paper check, if applicable.
- Copy of return preparer information provided by the taxpayer that is pertinent:
 - Return preparer's first and last name, address, and telephone number.

- Return preparer's taxpayer identification number (PTIN)
- Return preparer's social security number
- If the return was prepared at a business, church, or college, provide as much detail as possible, e.g., address, telephone number, and a copy of any advertisements.
- Copy of Form 8879, *IRS e-file Signature Authorization*.
- Other documentation to support the claim.

The revenue officer will review all the documentation provided to determine if Return Preparer Fraud or Misconduct occurred. If Return Preparer Fraud or Misconduct has occurred, the revenue officer will take the following actions:

1. Request a certificate of release under IRC 6326 erroneous lien provisions pursuant to IRM 5.12.3.5. These releases contain a statement that the filing was erroneous and are requested through Field Collection Advisory. Advisory also issues the Letter 544, *Letter of Apology - Erroneous Filing of Notice of Federal Tax Lien*. At the taxpayer's written request, a copy of the release and letter of apology may be furnished to creditors or credit bureaus. Instruct the taxpayer to provide names, mailing addresses, and permission to disclose the information.
2. Release levies on the affected tax modules.
3. Complete Form 3870, *Request for Adjustment*, with specific instructions on actions needed to correct the taxpayer's account. Do not attach IDRS prints to Form 3870.
4. Attach a copy of Form 14157-A and documentation to Form 3870.
5. Forward Form 3870 by mail, fax or electronic submission to the SB/SE Designated Identity Theft Adjustment Group (DITA) at the Philadelphia Campus:
 Internal Revenue Service
 DITA Mail Stop 4-G20.500
 2970 Market St
 Philadelphia, PA 19104
 E-Fax # 1-855-786-6575
 Outlook mailbox for electronic submission is *SBSE CCS DITA

DITA has the ability to make adjustments involving overstated withholding or credits. If the balance due is the result of an audit or Automated Underreporter (AUR) assessment, follow current IRM procedures for reconsideration.

If you do not receive the requested documentation from the taxpayer by the deadline established or the documentation does not support the taxpayer's claim of Return Preparer Fraud or Misconduct, advise the taxpayer the claim has been denied and resume collection activities.

The following chart provides examples of Return Preparer Fraud or Misconduct. If a determination of Return Preparer Fraud or Misconduct is made, take the following actions.

If <input type="checkbox"/>	Then <input type="checkbox"/>
<p>The taxpayer visited a tax return preparer and did not sign or authorize the filing of a return, but a return was filed with their name/SSN, and</p> <p>the taxpayer did not receive any refund for the return filed by the tax return preparer.</p> <p>(Included in this scenario is the situation where the taxpayer visited the tax return preparer to receive a tax estimate or a loan based on the anticipated income tax refund. The taxpayer signed and dated documents during the visit before the beginning of filing season or the documents were not official IRS forms.)</p>	<p>Prepare Form 3870 to adjust the taxpayer's account to reflect the taxpayer's actual return rather than the return filed by the preparer.</p> <p>The appropriate refund will be issued to the taxpayer.</p>
<p>The taxpayer visited a tax return preparer and did not sign or authorize the filing of a return, but a return was filed with their name/SSN,</p> <p>and the taxpayer received all or a portion of the refund for the return filed by the tax return preparer.</p> <p>(Included in this scenario is the situation where the taxpayer visited the tax return preparer to receive a tax estimate or a loan based on the anticipated income tax refund. The taxpayer signed and dated documents during the visit before the beginning of filing season or the documents were not official IRS forms.)</p>	<p>Prepare Form 3870 to adjust the taxpayer's account to reflect the taxpayer's actual return rather than the return filed by the preparer.</p> <p>The appropriate refund will be issued to the taxpayer. If the taxpayer received more than the refund shown on the taxpayer's actual return, the IRS should collect any excess amount from the taxpayer.</p>
<p>The taxpayer authorized the return filing, but tax data (exemptions, income, expenses, deductions, credits, etc.) on their return was altered after they signed it or the return otherwise includes items they did not authorize, and the taxpayer received the amount of refund expected.</p>	<p>Prepare Form 3870 to adjust the taxpayer's account to reflect the taxpayer's actual return rather than the return filed by the preparer.</p> <p>Do not pursue the taxpayer for collection of the falsified portion of the refund.</p>

If you have any questions, please contact me, or members of your staff should contact Collection Policy analyst Maureen Rattie.

cc: Director, Field Collection
www.irs.gov