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THE OFFICE OF THE TAXPAYER ADVOCATE OPERATES INDEPENDENTLY OF ANY OTHER IRS OFFICE AND REPORTS DIRECTLY TO CONGRESS THROUGH THE NATIONAL TAXPAYER ADVOCATE.

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## MEMORANDUM FOR TAXPAYER ADVOCATE SERVICE EMPLOYEES

FROM: Nina E. Olson   
National Taxpayer Advocate

SUBJECT: Reissuance of Interim Guidance on Recognizing and  
Assisting Victims of Return Preparer Refund Theft

This memorandum reissues interim guidance memorandum, TAS-13.1.10-0311-004 on how to recognize instances of refund theft by tax preparers and the steps to take to advocate for impacted taxpayers, as issued by Nina E. Olson, National Taxpayer Advocate, dated March 14, 2011.

### **Background**

There is a small segment of the tax return preparer community who defraud taxpayers and the IRS by inflating deductions and credits, and directing refunds to the preparers' bank accounts without the taxpayers' knowledge. There are also preparers who inflate taxpayers' tax liabilities and the amount of withholding in an effort to divert larger refunds into the preparers' bank accounts. There are many variations on the scenarios, and you will need to review the facts closely to determine the appropriate steps to take. For example, in situations where a tax liability in excess of the taxpayer's true liability is assessed as a result of the preparer's actions, abatement of the excess tax under IRC section 6404(a)(3) may be appropriate. In some cases, however, the preparer's actions may have resulted in a larger refund but did not result in an additional tax assessment, so there would be no tax to abate.

***Taxpayer Advocate Procedures***

The following three examples demonstrate how to advocate for taxpayers who have been victims of refund thefts by tax preparers. The following examples are representative of only a portion of the cases in TAS's inventory. 2

***Example A***

Sally provides a tax return preparer with her W-2 and relevant information. The preparer completes Form 1040, reflecting a zero tax liability, and indicating Sally is eligible for a \$350.00 refund. After providing Sally with a copy of that return, the preparer electronically files a different return with the IRS.

Sally is not aware that the preparer altered the return before he electronically filed it by inflating income and the credit for income tax withholding; the preparer reported a tax liability of \$500.00 and withholding of \$3850.00, thereby increasing the refund to \$3,350.00. Unbeknownst to Sally, the return preparer designated two bank accounts into which the \$3,350.00 refund is split: \$350.00 is direct-deposited into Sally's account and the balance of \$3,000.00 is direct-deposited into the preparer's own account. Thus, Sally has received the refund to which she thought she was entitled, based on the copy of the return the preparer had provided to her.

The IRS selects Sally's return for examination the following year. The IRS disallows her withholding and proposes a deficiency of \$3,000.00. Sally responds with a copy of the return the preparer had provided to her, and her checking account statement showing she received a refund of only \$350.00.

Exam adjusts Sally's income and withholding to reflect the amounts on her return. Exam closes its case. However, there is now a balance due to the IRS of \$3,000.00 attributable to the refund that was direct-deposited into the preparer's account and for the \$500.00 of tax the preparer originally reported (plus penalty and interest).

When the IRS received the fraudulent return from the preparer, the IRS assessed the \$500.00 tax liability reported on that return. Thus, abatement of the \$500.00 tax liability is appropriate, as Sally's true tax liability is zero.

### **Steps to Advocate**

1. Case Advocates build their case by securing a copy of the return given by the preparer to Sally, the administrative file, and Sally's bank statement reflecting that she only received a portion of the refund.
2. Secure a written statement from Sally signed under penalty of perjury, which reflects that a) the other bank account did not belong to Sally, and that Sally had no knowledge that the preparer was depositing a portion of the refund into that account, and b) Sally had no knowledge that the preparer had filed a different return with the IRS. The written statement should include the closing phrase, "This statement is true to the best of my knowledge and belief, under penalties of perjury" right above or below the signature.
3. Case Advocates will refer their cases on TAMIS to a Campus Technical Advisor (CTA) indicating "Preparer Refund Fraud."
4. The CTA will review the account and administrative file. When appropriate, the CTA will provide language for an Operations Assistance Request (OAR) recommending that a) the IRS reverse the \$3,000.00 refund from Sally's account, and b) the IRS abate the \$500.00 tax liability that was assessed when the IRS received the fraudulent return from the preparer. The CTA will return the case to the Case Advocate on TAMIS.
5. The Case Advocate will issue the OAR to Examination. Should the IRS not comply with the OAR, the Case Advocate needs to evaluate the reason for the Exam's failure to grant relief. If the Case Advocate believes the reason is insufficient, the Case Advocate should elevate to his/her manager for consideration of a TAO.

### ***Example B***

A tax return preparer completes Robert's return, indicating a refund of \$300.00. After providing Robert with a copy of that return, the preparer electronically files a different return with the IRS. Robert receives the \$300.00 refund he was expecting. Several months later, Robert receives a notice of examination and contacts the IRS. Robert learns that a refund for \$3,000.00 was issued from his account. The IRS advises Robert that his original return reported Schedule C income and one dependent. Robert is not self-employed and has no dependents. Thus, the preparer had altered the return before electronically filing to increase the amount of the refund

and to split the refund into two accounts – \$300.00 direct-deposited into an account belonging to Robert, and \$2,700.00 direct-deposited into an account belonging to the preparer. Robert is concerned that the IRS's examination of his return will result in him owing the IRS for the preparer's fraudulent refund. He immediately files an amended return with the IRS.

### **Steps to Advocate**

1. Case Advocates will build their case by securing a copy of the return given by the preparer to Robert, a copy of the amended return, and Robert's bank statement reflecting that he only received a portion of the refund.
2. Secure a written statement from Robert signed under penalties of perjury, which reflects that a) the other bank account did not belong to Robert, and that Robert had no knowledge that the preparer was depositing a portion of the refund into that account, and b) Robert had no knowledge that the preparer had filed a different return with the IRS. The written statement should include the closing phrase, "This statement is true to the best of my knowledge and belief, under penalties of perjury" right above or below the signature.
3. Case Advocates will refer their cases on TAMIS to a CTA indicating "Preparer Refund Fraud."
4. The CTA will review the account and documentation. When appropriate, the CTA will provide language for an Operations Assistance Request (OAR) recommending that the IRS reverse the \$2,700.00 refund from Robert's account. The CTA will return the case to the Case Advocate on TAMIS.
5. The Case Advocate will issue the OAR to Examination. Should the IRS not comply with the OAR, the Case Advocate needs to evaluate the reason for the Exam's failure to grant relief. If the Case Advocate believes the reason is insufficient, the Case Advocate should elevate to his/her manager for consideration of a TAO.

### **Example C**

A return preparer completes Judy's return, indicating a tax liability of \$500.00, withholding of \$1,500.00, and a refund of \$1,000.00. The preparer provides Judy with a copy of that return and tells her he will

electronically file the return for her. Before the preparer electronically files the return, however, he changes the tax to \$100.00, but does not change the withholding, so that the amount of the refund is now \$1,400.00. The preparer splits the refund on Form 8888, so that Judy gets the \$1,000.00 that she was expecting, but the preparer has \$400.00 direct deposited into his own bank account. The IRS audits the return and assesses \$400.00 in tax,

so that Judy's account now correctly reflects the tax of \$500.00 that she would have owed if the preparer had filed an accurate return on her behalf. The \$400.00 that the preparer fraudulently diverted into his own account, however, is still reflected on Judy's account.

In this example, abatement of tax is not appropriate, as the additional \$400.00 assessment resulted in Judy's account correctly reflecting her true tax liability of \$500.00.

### **Steps to Advocate**

1. Case Advocates will build their case by securing a copy of the return given by the preparer to Judy, the administrative file, and a bank statement reflecting that Judy only received a portion of the refund.
2. Secure a written statement from Judy signed under penalties of perjury, which reflects that a) the other bank account did not belong to Judy, and that Judy had no knowledge that the preparer was depositing a portion of the refund into that account, and b) Judy had no knowledge that the preparer had filed a different return with the IRS. The statement should include the closing phrase, "This statement is true to the best of my knowledge and belief, under penalties of perjury" right above or below the signature.
3. Case Advocates will refer their cases on TAMIS to a CTA indicating "Preparer Refund Fraud."
4. The CTA will review the account and administrative file. When appropriate, the CTA will provide language for an Operations Assistance Request (OAR) recommending that the IRS reverse the \$400.00 refund that was issued to the preparer. The CTA will return the case to the Case Advocate on TAMIS.

5. The Case Advocate will issue the OAR to Examination. Should the IRS not comply with the OAR, the Case Advocate needs to evaluate the reason for Exam's failure to grant relief. If the Case Advocate believes the reason is insufficient, the Case Advocate should elevate to his/her manager for consideration of a TAO.

**Effect on Other Documents:** TAS will incorporate this guidance into a new section within IRM 13.1, *Taxpayer Advocate Case Procedures*.

**Contact:** Please contact Mara Christian, Chief, Policy Group, Technical Analysis and Guidance, at (505) 837-5707, if you have any questions.