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Return Preparer Fraud: Remedies for Taxpayers





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Return Preparer Fraud

- 60 percent of taxpayers use paid return preparers
- Some unscrupulous preparers will:
 - Alter returns to inflate refunds
 - Direct refunds to an account under the preparer's control





Four Common Scenarios

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1. Unauthorized filing
2. Altered return information – no additional refund due to taxpayer
3. Altered return information – additional refund due to taxpayer
4. Misrouted direct deposit





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NTA Position

- The NTA believes the IRS has received sufficient guidance from the Office of Chief Counsel that would allow the IRS to:
 1. deem the first, falsified return a “nullity,”
 2. accept and process the second, true return submitted by the taxpayer, and
 3. issue any refund still due to the taxpayer, plus interest.



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TAS Activity

- 58 Taxpayer Assistance Orders (TAOs) involving preparer fraud issued in FY 2012
- An additional 76 preparer fraud TAOs issued in FY 2013 (thru 4/30)
- Proposed Taxpayer Advocate Directive
- Most Serious Problem in National Taxpayer Advocate's 2012 Annual Report to Congress





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Beard Analysis

- *Beard* has become the generally accepted test for determining the validity of a tax return.
 - Beard v. Commissioner, 82 T.C. 766, 777 (1984), aff'd per curiam, 793 F.2d 139 (6th Cir. 1986)





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Beard Analysis

- The document must:
 - Purport to be a tax return;
 - Be signed under penalties of perjury;
 - Contain sufficient data to permit a tax to be calculated; and
 - Evince an honest/genuine endeavor to satisfy the requirements of the tax law





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Challenges for the IRS

- Difficult to initially identify a return as one being altered by preparer
- Overcoming hurdles of proof





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IRS Interim Guidance

- In 2012, the IRS issued interim guidance to:
 - Accounts Management
 - Collection
- If the IRS agrees the taxpayer was a victim of preparer fraud:
 - The taxpayer should file an original return
 - The IRS will eliminate the entries on the taxpayer's account that stem from the fraudulent return filed by the preparer
 - The IRS will not pursue collection against the taxpayer





Remedies and Action Steps

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- Taxpayer must provide sufficient documentation establishing he/she is the victim of return preparer fraud
- Required documents:
 - Form 14157, *Return Preparer Complaint*, and
 - Form 14157-A, *Tax Return Preparer Fraud or Misconduct Affidavit*





Remedies and Action Steps

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- Other documents taxpayers may provide to substantiate their claim:
 - Copy of return that the preparer provided which they reviewed/approved (the unaltered return)
 - Preparer's business card
 - Statement signed under penalties of perjury, detailing the taxpayer's version of the facts
 - Police report





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Contact TAS

- www.TaxpayerAdvocate.irs.gov
- www.youtube.com/tasnta
- www.facebook.com/YourVoiceAtIRS
- twitter.com/YourVoiceatIRS
- www.taxpayeradvocate.irs.gov/2012-Annual-Report
- Call 877.777.4778
- File Form 911, *Request for Taxpayer Advocate Service Assistance (And Application for Taxpayer Assistance order)*

