

**Office of Chief Counsel  
Internal Revenue Service  
memorandum**

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date: June 10, 2014

to: Kevin Hatton  
Chief, e-File Provider Program Management  
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from: Blaise Dusenberry  
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CC:PA:01

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subject: e-File Suspension for Identity Theft

This memorandum responds to your request for advice. This advice may not be used or cited as precedent.

### **ISSUE**

Whether Revenue Procedure 2007-40, 2007-2 C.B. 1488, and Publication 3112 authorize the Internal Revenue Service (Service) to adopt rules that deny an IRS *e-file* Provider application or expel an individual from participation in IRS *e-file* when a stolen identity is used to apply for an electronic filing identification number (EFIN), or when an IRS *e-file* Provider is using stolen identities to e-file fraudulent returns.

### **CONCLUSION**

Revenue Procedure 2007-40 and Publication 3112 authorize the Service to adopt rules to deny an IRS *e-file* Provider application or expel an individual from participation in IRS *e-file* when a stolen identity is used to apply for an EFIN, or when an IRS *e-file* Provider is using stolen identities to e-file fraudulent returns.

[REDACTED]

[REDACTED]

## BACKGROUND

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

## LEGAL ANALYSIS

It is our view that Revenue Procedure 2007-40, 2007-1 C.B. 1488, authorizes the Service to adopt rules to deny an IRS *e-file* Provider application or expel an individual from participation in IRS *e-file* when there is proof that a stolen identity is used to apply for or to obtain an EFIN, or when there is proof that a Provider is using stolen identities to e-file fraudulent returns.<sup>1</sup> The requirements of participants in the IRS's *e-file* Program are set forth in Revenue Procedure 2007-40. Section 7, entitled Monitoring and Sanctioning of an Authorized IRS *e-file* Provider, provides:

01. The Service will monitor Authorized IRS *e-file* Providers for compliance with the rules governing IRS *e-file*. The Service

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<sup>1</sup> The Service has authority to regulate tax return e-filers. See *Thomas v. United States*, 2009 U.S. Dist. Lexis 8988 \*4-5; 103 A.F.T.R. (RIA) 826 (M.D. Ga. 2009); *Ramos v. Internal Revenue Service*, 315 F.Supp.2d 5, 13 (N.D.N.Y. 2004); *Brenner Income Tax v. Director of Practice of the Internal Revenue Service*, 87 F. Supp.2d 252, 257 (S.D.N.Y. 2000).

may sanction an Authorized IRS *e-file* Provider for violating any provision of this revenue procedure or the publications and notices governing IRS *e-file*.

- 0.2 Sanctions that the Service may impose upon an Authorized IRS *e-file* Provider for violations described in section 7.01 of this revenue procedure include a written reprimand, suspension or expulsion from the program, and other sanctions, depending on the seriousness of the infraction. Publication 3112 describes the infraction categories and the rules governing the imposition of sanctions.

Section 8.03 of the Revenue Procedure, Administrative Review Process, provides:

- 0.3 Publication 3112 describes the procedures regarding administrative review of a denial of participation in IRS *e-file* and any sanction imposed by the Service.

Publication 3112, IRS *e-file* Application and Participation (Rev. 03-09) describes the grounds for denying an applicant the ability to participate in IRS *e-file* and provides in part at page 10:

The IRS may deny an applicant participant participation IRS *e-file* for a variety of reasons that include but are not limited to:

6. Disreputable conduct or other facts that may adversely impact IRS *e-file*;
7. Misrepresentation on an IRS *e-file* Application;
8. Unethical practices in return preparation ....

Page 25 and 26 of Publication 3112 describes the suitability checks done by the Service, and provides in part:

All Authorized IRS *e-file* Providers, except those that function solely as Software Developers, must pass a suitability check on the firm as well as on all Principals and Responsible Officials of the firm prior to acceptance to participate in IRS *e-file*. To safeguard IRS *e-file*, the IRS completes suitability checks regularly on Authorized IRS *e-file* Providers, Principals and Responsible Officials. *If the results of a suitability check indicate that a firm or individual does not meet and adhere to IRS e-file requirements the Authorized IRS e-file Provider may be revoked from participating in IRS e-file or sanctioned as explained below.* (emphasis added).

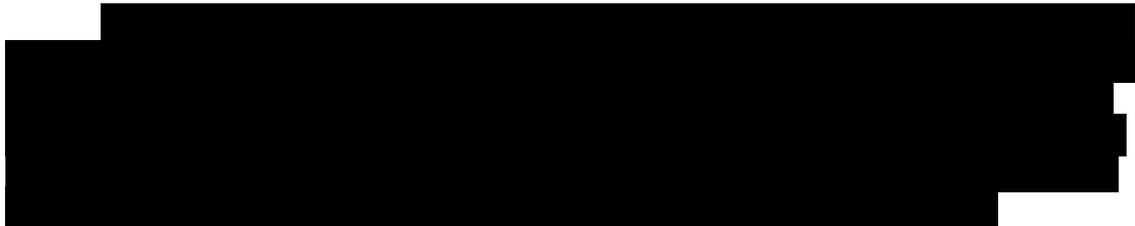
Page 26 of Publication 3112 describe sanctioning of IRS *e-file* Providers and provides in part:

**Sanctioning**

Violations of IRS *e-file* requirements may result in warning or sanctioning Principals, Responsible Officials and the Authorized IRS *e-file* Provider (Provider). The IRS may sanction any Provider when the firm or any of its Principals or Responsible Officials fails to comply with any requirement or any provision of this publication, as well as other publications and notices that govern IRS e-file. The IRS may also sanction for the same reasons that it denies an application to participate in IRS e-file. See Denial to Participate in IRS e-file. . . . The IRS may also sanction without issuance of a warning letter. Sanctioning may be a written reprimand, suspension or expulsion from participation from IRS e-file, or other sanctions, depending on the seriousness of the infraction. The IRS categorizes the seriousness of infractions as Level One, Level Two, and Level Three. The Provider, Principal, or Responsible Official may appeal sanctions through the Administrative Review Process. . . . In certain circumstances, the IRS can immediately suspend or expel a Provider, Principal or Responsible Official without warning or notice.

**Levels of Infraction . . .**

Level Three Infractions — Level Three Infractions are violations of IRS *e-file* rules and requirements that, in the opinion of the IRS, have a significant adverse impact on the quality of electronically filed returns or on IRS *e-file*. . . . A Level Three Infraction may result in suspension from participation in IRS e-file for two years beginning with the effective date of the suspension year, or depending on the severity of the infraction, such as fraud or criminal conduct, it may result in expulsion without the opportunity for future participation. The IRS reserves the right to suspend or expel a Provider prior to administrative review for Level Three Infractions.



Accordingly, we conclude that Revenue Procedure 2007-40 and Publication 3112 authorize the Service to adopt rules that deny an IRS *e-file*

Provider application or expel an individual from participation in IRS *e-file* when a stolen identity is used to apply for an EFIN, or when an IRS *e-file* Provider is using stolen identities to e-file fraudulent returns.



We hope this has been helpful. Please contact this office if we can be of further assistance.