Summary of the Chairman's Mark[1]
of a Bill to Prevent Identity Theft and Tax Refund Fraud
September 11, 2015

Sec. 1. Require the Internal Revenue Service (IRS) to develop guidelines for identity theft refund fraud cases to reduce burdens for victims

The provision requires the IRS, in consultation with the National Taxpayer Advocate, to develop publicly-available caseworker guidelines that reduce the burdens for identity theft tax refund fraud victims as they work with the IRS to sort out their tax affairs. The guidelines may include procedures to reduce the amount of time victims would have to wait to receive their tax refunds, the number of IRS employees with whom victims would need to interact, and the timeframe within which the issues related to the identity theft refund fraud should be resolved.

The provision is effective on the date of enactment, with the guidelines to be implemented within six months of the date of enactment.

Sec. 2. Require the IRS to prepare a report on identity theft refund fraud

The provision requires the IRS to report to the Senate Finance Committee and House Ways and Means Committee on its efforts to combat identity theft tax refund fraud, including, among other items, providing updates on its detection, prevention, and enforcement activities, detailing its efforts to assist victims through its victims' assistance unit, and discussing its efforts with respect to other avenues for addressing identity theft tax refund fraud.

The provision requires five biannual reports, the first of which would be required to be provided by September 30, 2018.

Sec. 3. Require the IRS to study the feasibility of blocking electronically-filed tax returns

The provision requires the IRS to prepare a feasibility study for a program that would allow persons who file an identity theft affidavit to elect to prevent the processing of any electronically-filed Federal tax return submitted by the person or anyone purporting to be such person. The study should include a recommendation on whether to implement such a program.

The provision is effective on the date of enactment. The study is due within 180 days after the date of enactment.

[1] Unless otherwise indicated, the provisions described herein either have no revenue effect or negligible revenue effect over the 10-year budget window.

Sec. 4. Criminal penalty for misappropriating taxpayer identity in connection with tax fraud

The provision makes using a stolen identity to file any return or other document a felony under the tax code, subject to a penalty of up to $250,000 and up to five years of imprisonment.

The provision also provides that it is the sense of the Senate that identity theft in connection with tax fraud be added to the list of felony aggravated identity theft crimes in section 1028A of Title 18, United States Code.

The provision applies to offenses committed on or after the date of enactment.

Sec. 5. Extend the IRS authority to require a truncated Social Security Number (SSN) on Form W-2

The provision provides a statutory change that effectively permits the Treasury Department to promulgate regulations that require or permit truncated social security numbers to be used when employers report annual wage and tax information to their employees on Form W-2. Thus, if someone's Form W-2 is stolen, it would not contain sufficient information for the thief to successfully file a fraudulent tax refund claim.

The provision is effective on the date of enactment.

Sec. 6. Enhancements to the IRS PIN program

The IRS issued approximately 1.2 million identity protection personal identification numbers (IP PINs) to identity theft victims for the 2014 filing season. Still, the IP PIN program fails to protect victims whose identities have been stolen but have not yet had their tax account compromised. The provision directs the IRS to expand the existing IP PIN program to anyone requesting protection from identity theft-related tax fraud.

The provision is effective on the date of enactment and is required to be available on a nationwide basis by July 1, 2018.

Sec. 7. Increase electronic filing of returns

These provisions require more tax returns and information returns to be filed electronically rather than on paper. Income tax and information returns filed electronically can be processed more rapidly and at much lower cost than paper return filings. In addition, income tax returns that are received electronically can be screened for fraud more thoroughly than those returns that are received on paper.

Under current law, a person that files fewer than 250 returns annually generally can file returns on paper. This provision reduces that number to 20 over a five year period – 250 to 200 for calendar year 2018, 200 to 150 for calendar year 2019, 150 to 100 for calendar

year 2020, 100 to 50 for calendar year 2021, and 50 to 20 for calendar years thereafter. To facilitate electronic filing by, and lessen the burden on, small business taxpayers, Section 10 of the Chairman's mark requires that the IRS establish an internet platform for Form 1099 filings (similar to the platform already operated by the Social Security Administration for Form W-2 filings).

An additional provision in this section requires that paid tax return preparers electronically file all individual income tax returns that they prepare. A waiver from this requirement is available in the case of tax return preparers that lack reasonable Internet access.

The provisions are effective for returns with a due date, determined without regard to extensions, after December 31, 2016.

Sec. 8. Modify due dates for filing certain information returns

Annual information returns used to report employee wages and non-employee compensation (Forms W-2 and 1099-MISC) are due to persons by January 31. These forms are not, however, due to the government until later in the filing season (March 31 for electronically filed forms and February 28 for forms filed on paper). The IRS uses this information to verify amounts reported on income tax returns and to identify errors.

This provision changes the due date for providing Forms W-2, W-3, and 1099-MISC information returns to the government (both electronically and paper filed) to within 15 days of the due date for employee and payee statements. This change would enhance the IRS's ability to identify and prevent fraudulent refund claims. An additional provision in the Chairman's mark (see Section 9) provides a generous de minimis threshold for errors on certain information returns that obviates the need for filing amended information returns and avoids the imposition of certain penalties.

In addition, the IRS is required to issue a report before 2018 on whether the due date for submitting other forms to the government should be changed in order to prevent tax refund fraud.

These provisions are effective for returns and statements relating to calendar years beginning after December 31, 2015, and are estimated to increase federal revenues by $151 million over the 10-year budget window.

Sec. 9. Safe harbor for *de minimis* errors on information returns, payee statements, and withholding

The provision would simplify tax compliance and administration by allowing relatively small errors ($100 and below ($25 and below for withholding and backup withholding)) on certain information returns to not be corrected. Taxpayers and the IRS would be relieved of the burden of filing and processing amended returns in order to correct de minimis errors, and the provision would relieve those persons filing these returns from certain penalties.

The provision applies to information returns required to be filed and payee statements required to be furnished on or after the date of enactment, and is estimated to decrease federal revenues by less than $500,000 over the 10-year budget window.

Sec. 10. Internet platform for Form 1099 filings

Pursuant to Section 7 of the Chairman's mark, many small business taxpayers would be required to transition from paper information return filing for Forms W-2 and 1099 to electronic filing. To lessen the burden on these small businesses, the IRS would be required to establish a simple and secure Internet platform for small business taxpayers to prepare and file information returns. Such a platform is already operated with great success by the Social Security Administration (SSA) for the employee wage and tax information that employers report on Form W-2. The IRS would be required to have this platform operational by January 1, 2018, for Form 1099-MISC information returns and by January 1, 2020, for all Form 1099 information returns. The IRS would be instructed to make this new system similar to the existing SSA system in order to provide a common and simple interface for small business taxpayers.

The provision is effective on the date of enactment.

Sec. 11. Authority to transfer IRS appropriations to combat tax fraud

The provision provides the IRS Commissioner with authority to transfer from amounts appropriated to other IRS accounts not more than $10 million in any fiscal year solely for preventing, detecting, and resolving potential cases of tax fraud. In addition, the amounts can be transferred only if customer service to the general public would not be impaired by the transfer.

The provision is effective on the date of enactment.

Sec. 12. Requirement that electronically-prepared paper returns include a scannable code

Requiring electronically-prepared returns that are submitted on paper to have a scannable code would allow the IRS to access the tax return information more rapidly and at a lower cost. In addition, the information captured by the IRS through the scannable code would be of a higher quality than that obtained by mechanically transcribing the paper return into IRS systems. The higher quality information obtained by scanning would allow for more thorough fraud screening by IRS fraud filters than is currently available for paper returns.

The provision requires that taxpayers who prepare their returns electronically but print and file the returns on paper must print their returns with a scannable code, and is effective for tax returns with a due date, determined without regard to extensions, after December 31, 2016.

Sec. 13. Streamlined critical pay authority for information technology positions

The IRS Restructuring and Reform Act of 1998 provided the IRS with certain personnel flexibilities, one of which was the streamlined critical pay (SCP) authority. The purpose of the SCP authority was to provide the IRS a management tool to quickly recruit and retain employees with high levels of expertise in technical or professional fields critical to the success of the IRS's restructuring efforts. The authority was originally authorized for 10 years and extended two times, ultimately expiring on September 30, 2013.

The provision would provide the IRS with SCP authority for approximately 5 years (from the date of enactment through September 30, 2020) for the purpose of filling critical information technology positions that will help address identity theft and tax refund fraud as well as broader cybersecurity concerns, and is effective on the date of enactment.

Sec. 14. Increased penalty for improper disclosure or use of information by preparers of returns

The provision would impose an increased monetary penalty for the disclosure of taxpayer identity information by a return preparer in cases where such information is used in an identity theft crime, whether or not related to the filing of a tax return. This provision is intended to provide a strong incentive for tax preparers to secure client records so that they cannot be stolen by identity theft criminals.

The provision applies to disclosures and uses made after the date of enactment, and is estimated to increase federal revenues by less than $500,000 over the 10-year budget window.

Sec. 15. Provide that the Department of the Treasury and the IRS have authority to regulate all paid tax return preparers

For decades the IRS has exercised regulatory authority over attorneys, certified public accountants (CPAs), enrolled agents, and certain other individuals who "practice" before the IRS under Treasury Department Circular No. 230. This regulatory authority established standards of competence and ethical behavior that these parties are required to exercise before the IRS when representing taxpayers in any capacity. Many of these practitioners are also subject to professional standards of competence and conduct under both state laws and professional licensing agencies.

In June 2011, the IRS issued final regulations that established a new class of tax practitioners known as "registered tax return preparers" that it sought to regulate for the first time. The overwhelming majority of individual income tax returns are currently prepared by these now unregulated tax return preparers. There is substantial evidence indicating that incompetent and unethical tax return preparers are harming both their

clients and the government. Most of the tax returns that involve refundable tax credits are prepared by unregulated tax return preparers.

Since 2011, the D.C. District Court (and the D.C. Circuit affirming on appeal) has prevented the IRS from enforcing these regulations on the grounds that the IRS' authority to regulate practitioners is insufficient to permit regulation of tax return preparers who do not practice or represent taxpayers before an office of the Treasury Department.

The provision provides the Treasury Department and the IRS with the authority to regulate all aspects of Federal tax practice, including paid tax return preparers, and overrides the court decisions described above. Another provision authorizes the IRS to revoke identifying numbers issued to tax return preparers for failure to comply with regulations under the tax code or title 31 of the United States Code.

The provisions are effective on the date of enactment and are estimated to increase federal revenues by $135 million over the 10-year budget window.

Sec. 16. Improvement in access to information in the National Directory of New Hires

This provision allows the IRS to access data in the National Directory of New Hires (NDNH) for the sole purpose of identifying and preventing false or fraudulent tax return filings and claims for refund. Expanding access to NDNH data will give the IRS an effective tool for verifying employment-related tax return information at the time the return is filed and processed. This provision would give the IRS greater ability to screen tax return filings for fraud, and fraudulent return filings and refund claims would be easier for the IRS to identify and prevent.

The provision is effective on the date of enactment.

Sec. 17. Taxpayer notification of suspected identity theft

Often times, identity theft and refund fraud victims are left in the dark about the criminals behind the fraud schemes, even when the IRS catches them and charges them with a crime. Meantime, victims are left feeling helpless and vulnerable knowing a thief has their personal information and is on the loose.

This provision requires the IRS to notify a taxpayer if there may have been an unauthorized use of a taxpayer's identity or that of the taxpayer's dependents, identify whether an investigation has been initiated and whether it is open or closed, disclose whether the investigation substantiated an unauthorized use of the taxpayer's identity and whether any action has been taken (such as a referral for prosecution), and, when a wrongdoer is charged with a crime, notify the victim as soon as possible, giving such victims the ability to pursue civil action against the perpetrators.

The provision applies to disclosures made after the date of enactment.

Sec. 18. Authenticate users of electronic services accounts

In the past, unscrupulous tax return preparers have used the IRS's suite of electronic services (e-Services) to perpetrate tax refund fraud. The provision requires the IRS to verify the identity of any individual opening an e-Services account before he or she is able to use such services.

The provision is effective 180 days after the date of enactment.

Sec. 19. Repeal provision regarding certain tax compliance procedures and reports

The IRS Restructuring and Reform Act of 1998 included a provision requiring the IRS to develop procedures and produce an annual report for streamlining compliance with the tax code. The Chairman's mark strikes this provision from the 1998 law so that IRS resources instead can be directed to help prevent identity theft and tax refund fraud and complete the reports, studies, and guidelines described in the Chairman's mark that are focused on preventing identify theft and tax refund fraud.

The provision is effective on the date of enactment.

Sec. 20. Clarify the use of credentials by Enrolled Agents

Treasury Department Circular No. 230 provides rules relating to practice before the IRS by attorneys, CPAs, enrolled agents, enrolled actuaries, and others. Individuals who meet the regulatory requirements established by the Treasury Department should be able to use specified credentials or designations in any State or Federal jurisdiction.

The provision permits enrolled agents meeting the Treasury Department's qualifications to use the designation "enrolled agent," "EA," or "E.A." and is effective on the date of enactment.