



National Conference of CPA Practitioners

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<i>Table of Contents</i>	<i>(Page)</i>
<i>Taxpayer Protection and Preparer Proficiency Act</i>	<i>1</i>
<i>Tax Refunds Verified (Prenoting) Before Payment.....</i>	<i>3</i>
<i>Decoupling of Theft Loss Deductions.....</i>	<i>4</i>
<i>Withholding Taxes on 1041 Refunded to Beneficiaries.....</i>	<i>5</i>

Additional Discussion Points:
The Simplify Automatic Filing Extensions (SAFE) Act
Accounting in STEM

TAXPAYER PROTECTION AND PREPARER PROFICIENCY ACT

ISSUE

To give the United States Department of the Treasury the authority to regulate income tax return preparers.

BACKGROUND

During the tenure of IRS Commissioner Shulman (2008-2012), the Internal Revenue Service attempted to regulate tax return preparers unilaterally. They had 3 requirements for anyone who did not have one of the following credentials: CPA, EA, JD. The requirements were as follows:

1. Obtain a Preparer Tax Identification Number (PTIN)
2. Do 15 hours of Continuing Professional Education (CPE) annually
3. Pass a one-time MINIMUM competency exam

While anyone who wanted to prepare tax returns would need to meet requirement #1 above, only those who did not have any of the above-listed credentials would have to meet requirements #2 & #3. The belief of the IRS was that since those already credentialed were currently under similar requirements regarding continuing education, and that they had already passed a rigorous exam to achieve that credential.

This attempt to regulate tax return preparers was challenged in the courts, culminating the case of ***Loving v IRS***, which ruled that the IRS had overstepped their authority in their attempt to regulate preparers. The case was appealed by the IRS, and the US Court of Appeals upheld the previous ruling. At this time, the IRS Commissioner, John Koskinen (2013-2017) stated that the IRS would now wait for Congress to pass legislation to grant the authority to regulate tax return preparers.

In the 116th Congress (2019-2020), H.R.3330/S.1192, "Taxpayer Protection and Preparer Proficiency Act of 2019" was introduced, granting the Treasury Department such authority.

In the 117th Congress (2021-2022), H.R.4184 was introduced.

While these attempts at granting the Treasury Department (i.e., the IRS) the authority to regulate preparers received bipartisan support, insufficient support prevented the proposed legislation from getting out of Committee and to the floor of both houses of Congress for general debate.

In the 118th Congress (2023-2024), S.1209, The "Tax Refund Protection Act" was introduced in April, 2023 and has been referred to the Senate Committee on Finance.

In the 2024 Annual Report to Congress, the National Taxpayer Advocate Purple Book calls for authorizing the Internal Revenue Service to establish minimum competency standards for tax return preparers and also be allowed to revoke the identification numbers of sanctioned preparers. Other professions have this protection on both the Federal & State levels, and the last 3 administrations (Obama, first Trump, Biden) have recommended to Congress to grant such authority to the Treasury Department. In this report, they note that 33.5% of EITC

payments in FY 2023 (\$21.9 billion) were estimated to be improper, and that the vast majority (96%) of these payments were attributable to returns prepared by non-credentialed preparers.

There are a great many tax return preparers who are not credentialed. According to the IRS, as of April 1, 2025 there are approximately 800,000 individuals who currently have a PTIN, and approximately 70% of those with a PTIN do not have any other credential. While the Internal Revenue Service keeps track of the professional credentials (CPA, EA, JD) of those who have a current, active PTIN, these credentials can overlap, which would result in a greater number of those with a PTIN to be otherwise credentialed.

This invites the opportunity to prepare fraudulent tax returns by those with just a PTIN as they do not face any form of recrimination or sanctions from any professional regulatory board or government agency. Furthermore, the IRS at this time does not have the ability to match the name of the preparer with PTIN on the return to determine if the return is fraudulent and should be rejected.

RECOMMENDATION

This legislation needs to be passed into law and implemented immediately.

TAX REFUNDS NEED TO BE VERIFIED BEFORE PAYMENT TO TAXPAYER

ISSUE

Annually, the IRS remits approximately \$3.1 billion of fraudulent refunds. The current refund system does not verify taxpayer account information prior to the processing of tax refunds and allows for increased potential errors and misappropriation of government funds.

BACKGROUND

Legislation mandates the IRS to process refunds within a 21-day period unless additional processing is required. With electronic filing, the timing of processing refunds has dramatically improved. Under the MeF system, the processing of refunds has become even quicker.

The issuance of tax refunds is a function that is handled by the Treasury Department through an Automated Clearing House or ACH transfer. This is a quick, secure and low-cost means for the IRS to transmit taxpayer refunds. However, as tax refund fraud and identity theft has continued to increase, scammers are using this process of refunding overpayments quickly to grab funds from honest taxpayers. Treasury has an agency goal of 99% of payments to be electronic by 2030. As the number of payments are processed, the amount of fraudulent payments could significantly increase.

RECOMMENDATION

The IRS and Treasury needs to reconsider their method of processing tax refunds to add additional safeguards.

There are several methods that the service could employ at little to no cost to insure a greater degree of reliability that refunds are, in fact, being issued to the correct taxpayer. One of these methods is the "prenote test". A prenote is a test transaction a financial institution uses to make sure the provided account information is valid before setting up an Automated Clearing House, or ACH, transfer. Prenotes are optional zero-dollar transactions frequently used for pre-authorizing payroll direct deposit.

Treasury would transmit basic information, such as name, Social Security number, ABA and account number to the financial institution for verification just as currently handled for SSA. This process may slow the actual refund by several days as the financial institution requires several days to review and verify the information provided by the sender, while not exceeding the 21-day processing period. However, this process could commence immediately upon acceptance of the tax return and would only need to occur when the banking information changes. This procedure will help insure that a refund will be sent to the taxpayer, not a criminal.

Other Government agencies, including Social Security Administration, already use prenote technology to verify the recipient information prior to their sending the initial benefit payment so this technology has already been vetted and proven to be effective.

DECOUPLING OF THEFT LOSS DEDUCTIONS

ISSUE

Unreimbursed personal theft losses due to cyber-crime are not deductible unless they are due to a federally declared disaster. The impact is magnified when retirement funds are lost requiring the amount to be included in income as a distribution from a retirement plan along with possible exposure to a ten percent (10%) excise tax if the distribution occurred prior to the taxpayer reaching age fifty-nine and one half (59 ½).

BACKGROUND

The Revenue Act of 1913 (P.L. 63-16) created a deduction for casualty losses. Theft losses became eligible as a deduction in 1916. The Revenue Act of 1964 (P.L. 88-272) placed a \$100 per-event floor on the theft loss deduction. The Tax Equity and Fiscal Responsibility Act of 1982 (P.L. 97-248) limited theft losses by 10% of adjusted gross income. The Katrina Emergency Tax Relief Act of 2005 (P.L. 109-73) eliminated the per -event and ten percent (10%) floors for theft losses attributable to Hurricane Katrina. The Emergency Economic Stabilization Act of 2008 (P.L. 110-343) repealed the per-event and ten percent (10%) floors for all federally declared disasters occurring in 2008 and 2009 and allowed the deduction in addition to the standard deduction.

The Tax Cuts and Jobs Act of 2017 (P.L. 115-97) limited the deduction for casualty losses and theft to those resulting from federally declared disasters from 2018 through 2025.

Recent legislation has proposed partially, or fully reversing changes made by the TCJA. S.2236 would remove the restrictions but impose a \$50,000 limit. H.R. 6938 would remove the restrictions with no deduction limit.

The FBI crime reports from the Internet Crime Complaint Center provided the following statistics:

Year	Complaints	Estimated losses	Change
2017	301,580	1.4 B	
2018	351,937	2.7B	17%
2019	467,361	3.5B	33%
2020	791,790	4.2B	94%
2021	847,376	6.9B	7%
2022	800,944	10.3B	-5%
2023	880,418	12.5B	10%

This table shows the increased instances of cyber-crime theft losses since TCJA was signed into law.

RECOMMENDATION

We recommend legislation that would decouple theft losses from the federally declared disaster requirement.

WITHHOLDING TAXES ON 1041 REFUNDED TO BENEFICIARIES

ISSUE

At times, there can be withholding on income that is required to flow into a Fiduciary tax return (Form 1041). Often, this is due to incorrect or lack of beneficiary designation. Under current tax law, unless the withholding is due to Backup Withholding, any overpayment is required to be paid back to the Estate. The income, however, flows to the respective beneficiaries. They must then wait for the IRS to process the refund to have the funds available to apply towards their personal liability.

RECOMMENDATION

We will offer two (2) separate recommendations for this issue.

1. In lieu of waiting for the refund to be processed and then sent immediately back to the IRS, the tax refund should be allocated to the Beneficiaries based upon their respective interest in the Estate.
2. The Executor should be allowed an option to Elect that any/all funds available for refund be allocated to the Beneficiaries on their respective Form K-1

In either case, the taxes could be reported on line 13 of Form K-1.