

**Area of Focus #10** **With a Recent Decline in Tax-Related Identity Theft Cases, the IRS Can Focus on Making Its Authentication Procedures Less Burdensome for Victims**

### TAXPAYER RIGHTS IMPACTED<sup>1</sup>

- *The Right to Quality Service*
- *The Right to Finality*

### DISCUSSION

Tax-related identity theft is an invasive crime that has significant impact on its victims and the IRS. Victims of identity theft not only must spend time dealing with the IRS to prove their identity, but generally will not receive their refunds until their cases are resolved.

The National Taxpayer Advocate has highlighted the need for the IRS to establish or improve procedures to assist victims of identity theft for well over a decade.<sup>2</sup> The IRS has adopted many of our recommendations to improve its identity victim assistance procedures over the years. For example, one significant change involved centralizing its identity theft victim assistance units, something that TAS has long advocated.<sup>3</sup>

#### Decline in Identity Theft Case Receipts

For reasons we cannot know for certain, the IRS has seen a decline in identity theft case receipts. During calendar year (CY) 2015, the IRS received nearly 700,000 identity theft cases in which the taxpayer needed victim assistance.<sup>4</sup> In CY 2016, the IRS received about 376,000 identity theft cases — a decline of about 46 percent.<sup>5</sup> As of March 2017, the IRS-wide inventory of identity theft cases was approximately 34,000 — less than half of the inventory two years ago.<sup>6</sup>

1 See Taxpayer Bill of Rights (TBOR), [www.TaxpayerAdvocate.irs.gov/taxpayer-rights](http://www.TaxpayerAdvocate.irs.gov/taxpayer-rights). The rights contained in the TBOR are now listed in the Internal Revenue Code (IRC). See Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Division Q, Title IV, § 401(a) (2015) (codified at IRC § 7803(a)(3)).

2 See National Taxpayer Advocate 2015 Annual Report to Congress 180-87; National Taxpayer Advocate 2014 Annual Report to Congress vol. 2, 44-90; National Taxpayer Advocate 2013 Annual Report to Congress 75-83; National Taxpayer Advocate 2012 Annual Report to Congress 42-67; National Taxpayer Advocate 2011 Annual Report to Congress 48-73; National Taxpayer Advocate 2009 Annual Report to Congress 307-17; National Taxpayer Advocate 2008 Annual Report to Congress 79-94; National Taxpayer Advocate 2007 Annual Report to Congress 96-115; National Taxpayer Advocate 2005 Annual Report to Congress 180-91; National Taxpayer Advocate 2004 Annual Report to Congress 133-36.

3 See National Taxpayer Advocate 2007 Annual Report to Congress 115.

4 IRS, *Global Identity (ID) Theft Report* (Jan. 2017). Part of the decline in identity theft cases may be attributable to the IRS's decision to modify the criteria for counting cases included in the "Identity Theft Taxpayer Impacted" inventory.

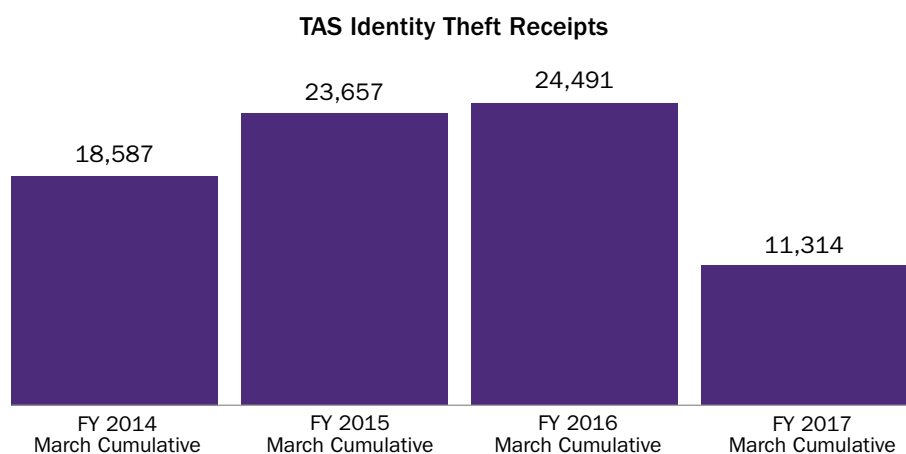
5 IRS, *Global ID Theft Report* (Jan. 2017).

6 IRS, *Global ID Theft Report* (Mar. 2017).

**FIGURE 3.10.1, IRS-Wide Inventory (Identity Theft Taxpayer Impacted)**<sup>7</sup>

	Calendar Year 2015	Calendar Year 2015 (Through March)	Calendar Year 2016	Calendar Year 2016 (Through March)	Calendar Year 2017 (Through March)
Beginning Inventory	71,098	71,098	64,424	64,424	31,328
Receipts	698,794	104,857	376,488	78,801	56,336
Closures	703,418	101,739	409,286	103,577	54,662
Ending Inventory	64,424	74,217	31,328	39,353	33,877

TAS has experienced a similar decline in its identity theft case receipts over the past fiscal year, reversing the trend in previous years. In fiscal year (FY) 2017 (through March), TAS had 11,314 identity theft case receipts — less than half the 24,491 identity theft cases TAS received over the same period in FY 2016.<sup>8</sup>

**FIGURE 3.10.2**<sup>9</sup>

The IRS is continually improving its fraud detection filters and safeguards. For example, the IRS now limits the number of refunds delivered to one bank account, which makes it more difficult for perpetrators to get away with mass refund fraud schemes.<sup>10</sup>

<sup>7</sup> IRS, *Global ID Theft Report* (Mar. 2017).

<sup>8</sup> Data obtained from Taxpayer Advocate Management System (TAMIS) (Apr. 1, 2016; Apr. 1, 2017).

<sup>9</sup> Data obtained from TAMIS (Apr. 1, 2016; Apr. 1, 2017).

<sup>10</sup> IRM 21.4.1.4.7, *Direct Deposits — General Information* (Oct. 1, 2016).

## The IRS Needs to Strengthen Procedures for Assisting Victims of Large-Scale Data Breaches

Now that the IRS is getting better at detecting traditional identity theft, some identity thieves are targeting tax practitioners and employers to obtain the personal identifying information (PII) of taxpayers.<sup>11</sup> TAS continues to receive reports of large-scale data breaches, which leave taxpayers vulnerable to identity theft.<sup>12</sup> With PII obtained from data breaches, these cyber criminals may be able to bypass many of the identity theft filters.

While the IRS has implemented a process for employers to report large-scale breaches, it still needs to develop procedures to assist the impacted taxpayers as a group.<sup>13</sup> TAS has received several complaints from practitioners whose clients are victims of data breaches.<sup>14</sup> When a taxpayer's personal information is breached, the IRS may require him or her to authenticate his or her identity in person at a Taxpayer Assistance Center (TAC). When the nearest TAC is hundreds of miles away, or when the TAC has limited hours and the next available appointment is months away, requiring victims of data breaches to authenticate in person at TACs is overly burdensome.

Could there be an alternative to in-person authentication that minimizes the risk to the IRS but is not too burdensome to the taxpayers? Should taxpayers who live too far from a TAC be given the option to mail in authentication documents? Should taxpayer representatives be allowed to authenticate their clients? These are the types of questions the IRS should be asking as it develops procedures to assist victims of large-scale data breaches.

## Impact of Protecting Americans from Tax Hikes (PATH) Act of 2015 Provisions

While it is difficult to single out one reason for the decrease in tax-related identity theft in the past year, one significant factor is the impact of the accelerated due dates for certain information reporting. As part of the PATH Act of 2015, the due date for filing Forms 1099-MISC (which are used to report non-employee compensation) and Forms W-2 with the IRS and Social Security Administration (SSA) was moved up to January 31.<sup>15</sup> Until this year, the due dates for these information reporting forms were the last day of February (or March, if filed electronically).

Prior to the enactment of the PATH Act, the IRS received much of the W-2 data from the SSA after the filing season, when the majority of refunds had already been issued, and began data matching in the summer. The accelerated deadline allows the IRS to verify the legitimacy of tax returns by comparing the return data against the data on Forms W-2 filed by employers **before** paying out refunds.

By the week ending March 23, 2017, the IRS had received approximately 222 million Forms W-2, a nearly 30 percent increase from the 171 million received by the same point in 2016.<sup>16</sup> There was an even greater increase in the number of Forms 1099-MISC that the IRS received in 2017 compared to 2016.

11 IRS, IR-2016-163, *Protect Your Clients: Security Summit Partners Warn Tax Pros of Cybercriminals, Launch New Awareness Tips* (Dec. 7, 2016).

12 See, e.g., Systemic Advocacy Management System (SAMS) issues 35584, 35757, 35763, 35767, 35822, and 35929.

13 IRS, *Data Theft Information for Tax Professionals*, <https://www.irs.gov/individuals/data-theft-information-for-tax-professionals> (Mar. 29, 2017).

14 See SAMS issues 35757, 35822, and 35929.

15 Protecting Americans from Tax Hikes (PATH) Act of 2015, Pub. L. No. 114-113, Division Q, Title II, § 201(a), 129 Stat. 2242, 3076 (2015) (codified at IRC § 6071(c)).

16 IRS Compliance Data Warehouse (CDW), Information Returns Master File (as of cycle 201712). For processing years 2016 and 2017, cycle 12 is the week ending March 24, 2016, and March 23, 2017, respectively.

By the week ending March 23, 2017, the IRS received 31 million Forms 1099-MISC, more than 2½ times the 12 million received by the same period in the prior year.<sup>17</sup>

## FOCUS FOR FISCAL YEAR 2018

In Fiscal Year 2018, TAS will:

- Advocate for recommendations made in Annual Reports to Congress related to IRS processing of identity theft cases, including assigning a single employee to coordinate IDT cases involving multiple issues or multiple years;
- Push for the IRS to develop procedures to assist victims of large-scale data breaches; and
- Collaborate with the IRS to thoroughly examine the impact of the accelerated due dates of information reporting.

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<sup>17</sup> IRS CDW, Information Returns Master File (as of cycle 201712). For processing years 2016 and 2017, cycle 12 is the week ending March 24, 2016, and March 23, 2017, respectively.