

Tax Return Identity Theft Protection Act of 2016
Senator Chuck Grassley

Background and Scope of the Problem:

- In tax filing season 2013, the IRS estimated that identity thieves were successful in stealing \$5.75 billion in fraudulent tax refunds. In the same filing season, the IRS estimated that it was able to prevent another \$24 billion in identity theft tax refunds from being disbursed.
- Typically, perpetrators of tax return identity theft file fraudulent returns electronically early in the tax filing season, so that the IRS receives the return before legitimate taxpayers have time to file their actual returns. The fraudulent return generates a refund that is often electronically deposited into the perpetrator's account. The crime then goes undetected until the taxpayer files his or her return.

Strengthening Penalties for Tax Return Identity Theft and Other Related Fraud (Section 2):

- The bill amends the identity theft statute to stiffen penalties for tax return identity theft and other related fraud.
- The increased maximum penalties would act as a further deterrent for the crime while delivering justice for the victims. The IRS estimates that it takes 278 days for the victim taxpayer to have his or her tax account corrected and refund reissued.
- Specifically, the bill amends 18 U.S.C. § 1028 (b)(3) and makes the offense of filing of a fraudulent tax return (violating Sections 7206 or 7207 of the Internal Revenue Code) by using a stolen identity punishable by a 20 year term of imprisonment. Currently, violations of Sections 7206 or 7207 are only subject to imprisonment terms of three years and one year, respectively.
- The bill also increases the maximum term of imprisonment (up to 20 years) for a defendant convicted of using a stolen identity to engage in other types of similar, related fraud -- conspiring to defraud the government (18 U.S.C. § 286); filing a false, fictitious or fraudulent claim against the government (18 U.S.C. § 287); or stealing public money, property or records (18 U.S.C. § 641). These statutes can also be used to charge tax return identity theft. Currently, they are punishable by imprisonment terms of 10 years, 5 years, and 10 years, respectively.

Vulnerable Victim Enhancements (Section 3):

- The bill also directs the U.S. Sentencing Commission to amend the Federal sentencing guidelines to provide for a penalty enhancement for any defendant convicted of a violation of the identity theft statute where the offense is punishable under the legislation's new additions to 18 U.S.C. § 1028 (b)(3). The defendant may receive the enhancement if he or she victimized or targeted individuals who were: (1) deceased; (2) over the age of 55; (3) citizens of territories or possession of the U.S.; (4) under the age of 14; (5) not required to file a Federal income tax return due to low earnings; or (6) active duty military.
- IRS case data collection indicates that the first five categories listed are the most oft-targeted groups during the tax filing season and members of the U.S. military are particularly exposed to similar tax return identity theft victimization given the delayed filing extensions authorized for such personnel serving overseas and in combat zones.

State of Mind Proof Requirement in Identity Theft Cases (Section 4):

- The bill also amends 18 U.S.C. § 1028 to clarify that in an identity theft case where a defendant “knowingly” uses “a means of identification of another person” with the intent to commit a crime, the government need not prove that the defendant *knew* the means of identification was of another person.
- In *Flores-Figueroa v. United States*, 556 U.S. 646 (2009), the Supreme Court held that this language requires prosecutors to prove that a defendant knew that the fraudulent means of identification belonged to another actual person. Specifically, the Court held that an individual illegally present in the United States who possessed what he thought was a document with a made-up Social Security number could not be convicted of aggravated identity theft because the government could not prove he knew the number belonged to a real person, which it did.
- In *United States v. Godin*, 534 F. 3d 51 (1st Cir. 2008), the First Circuit held that this knowledge requirement for an identity theft prosecution extended to financial crimes as well. In *Godin*, the defendant defrauded eight banks through a check cashing scheme by using seven fabricated SSNs that were close derivatives of her own SSN. However, the SSNs she used belonged to actual persons. The court concluded that the government failed to prove that the defendant knew that the made-up SSNs belonged to another person, and reversed her conviction.
- Proving that a defendant knows that a real person is linked to a document created to give him a false identity is often all but impossible. But the federal identity theft and fraud laws should protect Americans from those who would steal their property and ruin their lives. It shouldn’t matter if the government is unable to prove that the thief has knowledge of the person whose life he or she is ruining – the harm can be ruinous just the same.
- So Section 4 of the bill clarifies that under these statutes, the government must only prove that the defendant “knowingly” used a means of identification that did not belong to him, not that the defendant specifically knew that it belonged to another person.