

Congress Seen as Dawdling on Legislation to Combat Tax Identity Theft

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Despite national growth in tax-related identity theft, legislation to address the problem has not been forthcoming and so far has not been mentioned as being among the top priorities of the congressional taxwriting committees.

The problem has been overshadowed by other matters that are seen as more urgent. When asked on February 26 whether the House Ways and Means Committee had any plans to move legislation that would combat tax-related identity theft, committee Chair Dave Camp, R-Mich., said, "Not right now. I think we're going to try and take care of a lot of the reforms we want to see in a comprehensive bill, so that's still the focus."

Senate Finance Committee Chair Max Baucus, D-Mont., said at a hearing the same day that tax reform and job creation are among that committee's priorities, but he did not mention tax-related identity theft. A committee spokesman said the issue is a priority for Baucus and that he is investigating options to move forward on the issue.

Tax-related identity theft remains a large problem that shows no sign of abatement. In November 29 testimony (GAO-13-132T [📄](#)) before a subcommittee of the House Oversight and Government Reform Committee, James R. White of the Government Accountability Office said that in the first nine months of 2012, the IRS identified nearly 642,000 incidents of tax-related identity theft, more than double the amount for all of 2011, when the IRS identified some 242,000 incidents. However, the IRS does not know the full extent of the theft because many cases may go undetected, White said. (Related coverage [📄](#).)

The Treasury Inspector General for Tax Administration estimated in a report (2012-42-080 [📄](#)) last year that the IRS could issue \$21 billion in fraudulent refunds related to identity theft in the next five years. The IRS disputed that estimate, saying it was too high. Earlier this month, the IRS announced that it had intensified its efforts to combat identity theft. (Prior coverage [📄](#).)

Without legislative changes, however, criminals will retain access to a government-maintained, publicly available database that aids in the commission of tax fraud: the so-called Death Master File (DMF), which contains the Social Security number, full name, date of birth, and date of death of individuals who have died. The Social Security Administration, which maintains the DMF, cannot restrict access to information in the database without legislative changes.

Jonathan E. Agin, a Washington attorney, in testimony [📄](#) before a joint hearing of two House Ways and Means subcommittees last year, said that his daughter, Alexis, died of cancer in 2011 and that her identity was stolen later that year to commit tax

fraud. Agin urged members of Congress to pass a bill, H.R. 3475, that would have limited access to information in the DMF. The bill, introduced by Ways and Means member Sam Johnson, R-Texas, did not make it out of the committee and expired at the end of 2012.

Agin told Tax Analysts he is still in touch with Johnson's office and that he believes Johnson will reintroduce a bill to restrict access to the DMF. He said he was frustrated, however, by the lack of urgency in Congress. "The problem continues to happen to not only people in the childhood cancer community, but more broadly to people across the country," he said. "You would think that an issue that would save the government at least \$1.2 [billion] to \$1.5 billion per year would be a priority at this point, when fiscal concerns would be high on everybody's radar screen."

Agin said that since testifying in February of last year, he has heard from more than 100 other families with stories similar to his and that the problem is especially poignant for victims. "From an emotional standpoint, when you lose your child and find that their name and Social Security number are being used for someone to gain a small tax refund, it's difficult for people to accept," he said.

Last year, the House passed by voice vote the Stopping Tax Offenders and Prosecuting (STOP) Identity Theft Act of 2012 (H.R. 4362 ) , which would have increased penalties for criminals who commit tax-related identity fraud, but the Senate did not vote on the bill. Rep. Debbie Wasserman Schultz, D-Fla., reintroduced the bill February 15 as H.R. 744. The text of that bill was not available at press time.

So far, a few bills have been introduced in the 113th Congress that would restrict access to the DMF, including H.R. 295 , H.R. 466 , and H.R. 531 . H.R. 466, the Social Security Death Master File Privacy Act of 2013, introduced by Rep. Michael E. Capuano, D-Mass., would bar the publication of SSNs in the DMF, while the other two would establish a program to certify individuals to access information in the DMF, an approach taken in most bills in order to address the theft of information from the database.

A spokeswoman for Capuano said H.R. 466 was written to restrict SSNs in such a way that genealogists, researchers, and others with legitimate uses could still access other relevant information in the file. Should the legislation advance, Capuano would be open to changes that address groups that use the file for legitimate reasons, such as life insurers, the spokeswoman said.

Floyd L. Williams of Public Strategies Washington Inc., who served 16 years as IRS director of legislative affairs until he left the agency in 2012, told Tax Analysts that he thinks bills to address identity theft don't get a lot of attention in Congress because they are too obscure.

"The problem with anything related to the IRS or the IRS's administration of the tax system is that tax law to a lot of people is esoteric," Williams said. "Unlike whether or not you increase the rates or lower the rates or make capital gains more attractive, IRS-related legislation is not what's going to excite a lot of people."

Williams said that while he thinks legislation could help in combating tax-related identity theft, especially by raising awareness, what's really needed are dedicated resources to address the problem. "I don't think that identity theft is an area that really can be legislated through the tax code," he said.

IRS efforts to address identity theft have been somewhat successful, but they have been hampered by budget cuts, Williams said. "In an era of flattening . . . budgets, it's going to get worse because to the extent that the IRS puts more people on identity theft, it's got to take them off other areas," he said.

The budget squeeze could be exacerbated by the impending sequestration budget cuts, which acting Treasury Secretary Neil Wolin said in a February 7 letter would reduce the IRS's capacity to detect and prevent fraud.

Partly because of the limited funds available to address the problem, Senate Finance Committee member Robert P. Casey Jr., D-Pa., on February 27 sent a letter to the heads of the IRS, the Justice Department, and the Social Security Administration calling for the creation of a multi-agency task force to fight tax-related identity theft.

Casey acknowledged some ad hoc cooperative efforts among the agencies to fight tax fraud, but he said that "a dedicated, ongoing taskforce is needed. Such a taskforce would allow your agencies to better share information and make the best use of limited resources."

The letter continued:

I ask that you each name representatives to this taskforce, so that it can begin its work as soon as possible. This taskforce should regularly report to Congress on efforts -- both by individual agencies and cooperatively -- to combat identity theft tax fraud. The taskforce should also seek input from your agencies, their respective Inspectors General and local law enforcement in order to make recommendations on combating this fraud.

An IRS spokesman asked about the letter said the agency would respond directly to Casey rather than through the media.

The letter says Congress has a role to play in addressing tax-related identity fraud and that the task force would be well suited to make legislative changes. Asked if the senator planned to introduce a bill to combat tax fraud, a spokesman for Casey said he would wait to see if the agencies respond positively to the proposal and that he plans on working with Baucus to tighten laws that would prevent fraud.

John T. Adams, district attorney for Berks County, Pa., said in a release from Casey that tax fraud is the single most profitable crime in his jurisdiction. Adams told Tax Analysts that the cases in Berks County amount to "millions and millions" of dollars in tax fraud. Tax fraud is "not a problem that we can arrest ourselves out of," he said. "We need to attack it in many different ways," administratively and legislatively, he said.

What would be most helpful is to institute verifications of information on Forms W-2 and tax refund claims so that the information can be checked before refunds are

sent out, Adams said. The IRS has asked Congress to expand its access to the National Directory of New Hires (NDNH), which it could use to verify refund requests, but lawmakers have not yet acted on the request. (Prior coverage [here](#).)

Agin, asked about the task force proposal, said that while he would be willing to consider it, he would prefer a legislative solution. Members of Congress have previously tried to implement informal solutions to combat identity theft, such as asking genealogical services to remove some publicly available data, and some complied and some didn't, Agin said.

"Obviously, legislative solutions sometimes cause larger issues, unforeseen issues," Agin said, but he added that he thought it would be the best response considering how the information is being provided and how it's handled.

Agin said he thinks lawmakers are not moving more quickly because some are under pressure from financial services providers not to restrict access to the DMF. Information in the DMF is used by some pension funds and insurance companies to prevent sending payments to individuals who have died.

Williams said he thinks some members of Congress are simply reluctant to give the IRS access to more personal information. Legislation like the proposal to expand the IRS's access to the NDNH involves more disclosure, he said, adding, "Another piece of info would be in the hands of the IRS, and people who wouldn't be excited about it would say the IRS already has all the info it needs."