



Department of Justice

STATEMENT OF

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BEFORE THE

SENATE FINANCE COMMITTEE
SUBCOMMITTEE ON FISCAL RESPONSIBILITY AND ECONOMIC GROWTH

CONCERNING

“THE SPREAD OF TAX THEFT BY IDENTITY THEFT”

MARCH 20, 2012

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**Deputy Assistant Attorney General for Criminal Matters
Tax Division, U.S. Department Of Justice
before the
Senate Finance Committee
Subcommittee on Fiscal Responsibility and Economic Growth
Concerning
The Spread of Tax Fraud by Identity Theft
March 20, 2012**

Chairman Nelson, Ranking Member Crapo, and Members of the Subcommittee, thank you for the opportunity to appear before you this morning to discuss the Department of Justice's (Department) efforts to combat tax refund fraud arising from identity theft.

The Department greatly appreciates the commitment that the Chairman, the Subcommittee, and staff have made to highlight the serious crimes of identity theft and tax fraud. The Subcommittee's hearings on May 25, 2011, and this hearing today, bring attention to criminal behavior that threatens the fundamental integrity of our tax system. Although we stand ready to enforce the tax laws whenever and wherever necessary, enforcement is only one element of successful tax administration. Thanks to your efforts, taxpayers will have a greater understanding that they need to detect and report identity theft and tax fraud. Those who are engaged in designing and carrying out these tax fraud schemes will also be on notice that their crimes will be detected and prosecuted to the fullest extent of the law.

In conducting law enforcement investigations, the Department goes to great lengths to ensure that the government's inquiry is complete, and that testimony and evidence are gathered and fully analyzed outside of the public arena. Our policy of not disclosing non-public information about ongoing matters protects the rights of individuals who may be assisting in the investigation, the rights of those under investigation and criminal defendants, and the integrity of the investigation itself. Our ability to comment is also circumscribed by Federal Rule of Criminal Procedure 6(e), which protects the disclosure of grand jury information. In a tax case, the tax privacy statute, 26 U.S.C. § 6103, further limits the government's ability to disclose tax information. Therefore, my remarks today will be limited to information that is already available in the public record.

At some point in our lives too many of us have experienced, or will experience, the stressful moment when we realize that a credit card or our identification is lost or stolen. If we are fortunate, the only cost we suffer is the inconvenience of obtaining new accounts and identification. However, for victims of identity theft, the economic and personal consequences are much more severe and often long-term. As the victims who testified before the Subcommittee's hearing on May 25 eloquently recounted, in addition to suffering the original theft of their identity, the crime against them was

compounded when the stolen information was then used to steal the federal tax refund to which they were legally entitled. Further, when a stolen identity is used to commit tax refund fraud, all Americans are impacted by the loss to the federal fisc.

In recognition of the importance of the problem, the Department and the IRS have devoted significant resources to the successful prosecution of a number of individuals who have engaged in identity theft and tax fraud. While the schemes used to steal identities vary, in many instances the stolen identity was used to access an unwitting victim's legitimate tax refund. Depending on the facts of a particular case, we can bring a variety of charges, including aggravated identity theft, filing a false claim for refund and conspiracy. While each prosecution may only involve a single defendant or a small group of defendants, in the majority of cases the number of incidents and victims is significantly greater.

In the last several years, the Department has successfully prosecuted a variety of cases in which a stolen identity was used to commit tax refund fraud. Here are some recent examples of successful prosecutions of refund fraud involving identity theft:

- In December 2011, Shawntrece Sims, a Tampa, Florida resident, was sentenced to nine years in prison for a tax and mail fraud scheme. Sims

admitted to obtaining social security numbers of other individuals and using this information to file false tax returns. In many cases, the individuals were not aware that their identifying information was being used and in other cases, the individuals were deceased. Sims was ordered to pay \$672,887 in restitution to the government.

- In November 2011, Roger Snells, also of Tampa Florida, was sentenced to 54 months in prison for tax fraud and aggravated identity theft.

Snells admitted to using identifying information of deceased individuals to electronically file fraudulent tax returns with the IRS.

This case was part of Operation Rainmaker, a coordinated effort by the United States Attorney's Office, the U.S. Secret Service, U.S. Postal Inspection Service, IRS Criminal Investigation, the FBI, and the Tampa Police Department.

- In January 2012, Marsha Elmore, an Alabama tax return preparer, was sentenced to 184 months in prison for filing false claims, wire fraud, and aggravated identity theft. Elmore admitted to steal tax refunds by filing false tax returns using stolen identities, including names, Social Security numbers, and dates of birth. She was ordered to pay over \$1 million in restitution to the IRS.

- In December 2011, Janika Fernae Bates, a resident of Millbrook, Alabama, was sentenced to 94 months in prison following her conviction at trial on charges of aggravated identity theft, wire fraud, and conspiracy to make false claims for tax refunds. The evidence at trial established that Bates obtained names and Social Security numbers of student loan borrowers from electronic databases of a former employer.

Our success in prosecuting these and many other cases is the direct result of the close cooperation among the Tax Division, the United States Attorneys' offices, and the IRS. The Tax Division supervises most federal tax prosecutions. Tax Division prosecutors work closely with IRS Criminal Investigations Special Agents to develop and prosecute a wide array of tax crimes, including tax refund fraud arising from identity theft. Tax Division prosecutors also routinely provide tax expertise to United States Attorneys' offices across the country. These close working relationships enable the Department and the IRS to share knowledge and leverage resources in order to combat refund fraud across the country.

The ability of the IRS to share tax information with the Department and others is governed by 26 U.S.C. § 6103. Section 6103(a) requires officers and

employees of the United States to keep tax returns and return information confidential, and prohibits them from disclosing such information, except as specifically authorized by the Internal Revenue Code. Thus, absent a specific exception, tax information received by the IRS must remain confidential and cannot be disclosed. To the extent that an exception applies and the IRS is able to disclose the information to another officer or employee of the United States, the recipient is also subject to the confidentiality requirements of section 6103. In recognition of the Department's role in prosecuting and litigating tax cases, Congress included specific exceptions to permit the IRS to disclose information to the Department for use by employees who are personally engaged in a proceeding involving tax administration. To safeguard taxpayer privacy, in most instances specific taxpayer information may not be disclosed by the IRS to the Department unless and until a matter is specifically referred to the Department. The successful enforcement efforts I mentioned earlier were possible because of the proper sharing of taxpayer information as authorized by section 6103.

At past hearings before Congress, questions have been asked about how local law enforcement could play a role in investigating and prosecuting identity theft and federal tax refund fraud. Given the unique ability of local law enforcement to understand what is going on in their community, at first

glance the idea has obvious appeal. In many instances, the Department has partnered with local law enforcement to successfully combat a wide variety of crimes. For example, in certain cases the Department may formally deputize local law enforcement so they can assist federal law enforcement in a federal tax investigation. However, in these cases local law enforcement is only permitted to access information related to the federal tax investigation, and those who participate in the investigation are not permitted to utilize the tax information in a state or local non-tax investigation or prosecution. While a statutory exception does authorize disclosure to State tax officials and state and local law enforcement who are charged with the administration of State tax laws, this exception would not permit disclosing tax information to local law enforcement who are pursuing non-tax state charges such as identity theft or fraud.

Since its enactment in 1976, section 6103 has served to protect the personal and financial information provided by American taxpayers to the IRS. The statute plays a critical role in fostering the notion that in exchange for voluntary compliance with their reporting and payment obligations, taxpayers can expect that, absent a specific exception authorizing disclosure, their information will remain confidential. The Department and the IRS go to great lengths to ensure that all of its employees understand and fulfill their

obligations to safeguard taxpayer information as required by the Internal Revenue Code.

In crafting limited exceptions to section 6103, Congress sought to balance individual privacy interests with the legitimate needs of tax administration and enforcement. This balance is not an easy one, as clearly demonstrated by the issues that we are discussing today. Given their training and experience in federal tax enforcement, Department prosecutors and IRS investigators are uniquely suited to carrying out the statutory mandate to strike the proper balance between respecting taxpayer privacy and ensuring compliance with the law. The joint efforts of the Department and the IRS demonstrate that vigorous tax enforcement can be accomplished while respecting taxpayer privacy rights. However, care and consideration should be given to expanding access to taxpayer information to a wide array of agencies and individuals who may not have the same training and experience as federal officials. Expanding the circle too far or too fast might unintentionally erode the safeguards that Congress has enacted in section 6103.

While prevention and early detection are always the first and best line of defense, the Department recognizes that prosecution is also a critical and effective tool when it comes to combating identity theft and tax fraud. It is an

unfortunate truth that there will always be a small but persistent segment of society who will seize on any opportunity to make “a quick buck” at the expense of others. While the Department will never be able to fully eradicate crimes such as identity theft and tax fraud, our persistence, dedication, and success in prosecuting these cases sends a clear message to those who engage in this conduct that they will be held accountable for their actions.

Thank you again, Mr. Chairman, for the opportunity to appear this morning. The Department is interested in properly balancing the privacy interests of taxpayers and the genuine needs of local and state law enforcement. We welcome the opportunity to work with this Committee toward that end. I am happy to take any questions that you or the other Members of the Subcommittee may have.