



**U. S. Department of Justice**

**Tax Division**

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Office of the Assistant Attorney General

Washington, D.C. 20530

DATE: September 18, 2012

FROM: Kathryn Keneally *KK*  
Assistant Attorney General

TO: All United States Attorneys

RE: Expedited and Parallel Review of Proposed Indictments Arising from Stolen Identity Refund Fraud

This memorandum sets forth an expedited review process by the Tax Division and United States Attorneys' Offices for all Stolen Identity Refund Fraud cases presented to federal grand juries. It applies to Stolen Identity Refund Fraud cases that meet the criteria set forth in Tax Directive No. 144 entitled "Temporary Delegation of Authority to Authorize Grand Jury Investigations, Criminal Complaints, and Seizure Warrants for Certain Offenses Arising from Stolen Identity Refund Fraud" ("Directive"). This memorandum is cross-referenced in Footnote 1 of the Directive wherein the Tax Division advised that it "will implement expedited review procedures in Stolen Identity Refund Fraud prosecutions providing for simultaneous review of the proposed indictment or information by the Tax Division and the United States Attorneys' Offices."

The Directive generally defines Stolen Identity Refund Fraud cases as those involving a fraudulent claim (or attempted claim) for a tax refund wherein the fraudulent claim for refund (i.e., tax return) is in the name of a person whose personal identification information appears to have been stolen or unlawfully used to make the claim, and the claim is intended to benefit someone other than the person to whom the personal identification information belongs. These cases also include the negotiation (or attempted negotiation), possession, or transfer, of refund proceeds resulting from these types of refund schemes. (See enumerated Paragraphs 8-11 of Tax Directive No. 144).

The expedited review process set forth in this memorandum is derived from a proposal made by the Stolen Identity Refund Fraud Working Group of the Attorney General's Advisory Committee (AGAC). With only minor changes, the Tax Division has adopted the proposal in its entirety. Accordingly, the procedures outlined below provide a methodology that will allow the Department of Justice Tax Division to review Stolen Identity Refund Fraud cases concurrently with the United States Attorney's Office's review processes, thereby meeting the United States Attorneys' Offices' arraignment and grand jury schedules for Stolen Identity Refund Fraud cases.

Scenario involving Complaint and Indictment:

1. In consultation with one of the United States Attorneys' Offices ("USAO"), Defendant(s) are arrested by state, local, or federal agency based on evidence of Stolen Identity Refund Fraud.
2. If the investigation is referred to a USAO by an agency other than the IRS, the USAO will inform local Internal Revenue Service, Criminal Investigation ("IRS-CI") to give IRS-CI the opportunity to participate in the investigation. (See enumerated Paragraph 4 of Tax Directive No. 144).
3. Pursuant to the delegation of authority in Tax Directive No. 144, the USAO opens a criminal tax matter and assigns an Assistant U.S. Attorney ("AUSA") to handle the case.
4. Pursuant to the delegation of authority in Tax Directive No. 144, AUSA and investigative agent prepare a criminal complaint and affidavit, which is then sworn out before a Magistrate Judge.
5. AUSA forwards executed affidavit and criminal complaint to the United States Attorney's Office Point of Contact ("USAO POC"), who in turn forwards, via email, the affidavit and complaint to IRS-CI and the Tax Division's Point of Contact ("Tax POC"). (See enumerated Paragraph 6 of Tax Directive No. 144).
6. AUSA prepares a proposed indictment and prosecution memorandum (hereinafter "indictment package").
7. AUSA forwards indictment package to supervisory AUSA for internal review, and also to the USAO POC for Department of Justice Tax Division ("DOJ Tax") review.
8. The USAO POC forwards the indictment package, via email, to Tax POC for simultaneous review and forwards its charging recommendation to IRS-CI, with notice to both DOJ Tax and IRS-CI of the scheduled indictment presentation date. DOJ Tax agrees that it will expedite its review and final determination prior to the scheduled grand jury date.
9. USAO supervisory chain reviews indictment package.
10. Supervisory AUSA advises USAO POC of any significant, substantive modifications or revisions made to proposed indictment by USAO supervisory chain, and the USAO POC then forwards revised indictment package to Tax POC.

11. Prior to final signature on indictment by U.S. Attorney or designated representative, DOJ Tax's final determination should be received via email by the USAO POC, who will then forward it to the indictment signing authority.
12. In the ordinary course, DOJ Tax will be given three (3) calendar days (provided the calendar days include at least one (1) business day) upon electronic receipt of the indictment package from the USAO POC to review the indictment package. In matters involving unusual, exigent circumstances, DOJ Tax will make every effort to timely review and take final action on the pending indictment package.
13. If on the business day prior to presentation to the Grand Jury, DOJ Tax has not given or denied approval of the indictment, the USAO must email Tax POC and the DOJ Tax Section Chief and Assistant Chiefs requesting action by close of business.
14. In the event that DOJ Tax does not respond with an email giving or denying approval by the time the AUSA is scheduled to present the matter to the Grand Jury, the USAO has authority to proceed with presentation to the Grand Jury and seek indictment as though approval had been received.

Scenario involving Indictment:

1. In consultation with one of the USAOs, Defendant(s) are arrested by state, local, or federal agency based on evidence of Stolen Identity Refund Fraud; or, public safety, operational and/or flight concerns regarding targets of investigation create need to arrest the targets and invoke the expedited review and approval procedures.
2. If the investigation is referred to a USAO by an agency other than the IRS, the USAO will inform local IRS-CI to give IRS-CI the opportunity to participate in the investigation. (See enumerated Paragraph 4 of Tax Directive No. 144).
3. Pursuant to the delegation of authority in Tax Directive No. 144, the USAO opens a criminal tax matter and assigns an AUSA to handle the case.
4. AUSA prepares an indictment package.
5. AUSA forwards indictment package to supervisory AUSA for internal review, and also to the USAO POC for DOJ Tax review.
6. The USAO POC forwards the indictment package, via email, to Tax POC for simultaneous review and forwards its charging recommendation to IRS-CI, with notice to both DOJ Tax and IRS-CI of the scheduled indictment presentation date.

DOJ Tax agrees that it will expedite its review and final determination prior to the scheduled grand jury date.

7. USAO supervisory chain reviews indictment package.
8. Supervisory AUSA advises USAO POC of any significant, substantive modifications or revisions made to proposed indictment by USAO supervisory chain, and the USAO POC then forwards revised indictment package to Tax POC.
9. Prior to final signature on indictment by U.S. Attorney or designated representative, DOJ Tax's final determination should be received via email by the USAO POC, who will then forward it to the indictment signing authority.
10. In the ordinary course, DOJ Tax will be given three (3) calendar days (provided the calendar days include at least one (1) business day) upon electronic receipt of the indictment package from the USAO POC to review the indictment package. In matters involving unusual, exigent circumstances, DOJ Tax will make every effort to timely review and take final action on the pending indictment package.
11. If on the business day prior to presentation to the Grand Jury, DOJ Tax has not given or denied approval of the indictment, the USAO must email Tax POC and the DOJ Tax Section Chief and Assistant Chiefs requesting action by close of business.
12. In the event that DOJ Tax does not respond with an email giving or denying approval by the time the AUSA is scheduled to present the matter to the Grand Jury, the USAO has authority to proceed with presentation to the Grand Jury and seek indictment as though approval had been received.