DEPARTMENT OF JUSTICE

TAX DIVISION

DIRECTIVE NO. 144

Re: Temporary Delegation of Authority to Authorize
Grand Jury Investigations, Criminal Complaints, and Seizure Warrants
for Certain Offenses
Arising from Stolen Identity Refund Fraud

**Purpose and Scope**

The purpose of this delegation is to provide federal law enforcement officials with the ability to timely address crimes of Stolen Identity Refund Fraud by delegating to the United States Attorney the authority to: (1) open certain tax-related grand jury investigations; (2) arrest and federally charge by criminal complaint a person engaged in Stolen Identity Refund Fraud crimes; and (3) seek and obtain seizure warrants for forfeiture of criminally derived proceeds arising from Stolen Identity Refund Fraud crimes, all without prior approval from the Criminal Enforcement Sections of the Tax Division.[1] This delegation of authority is subject to the following limitations and those set forth at Paragraphs 1 through 7 of this Directive.

First, the scope of this delegation is limited to Stolen Identity Refund Fraud crimes that entail the filing of wholly fraudulent tax returns without the named taxpayer's knowledge or consent. These crimes do not involve the legal analysis typically associated with the evaluation of whether or not a material item on a filed tax return is or is not intentionally and willfully false -- matters exclusively delegated to the Tax Division to ensure uniform enforcement and application of the tax laws.

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[1] In tandem with the delegation of authority in this Directive, the Tax Division has implemented expedited review procedures in Stolen Identity Refund Fraud cases when a defendant is arrested by a state, local, or federal agency. These procedures provide for simultaneous review of the proposed indictment or information by the Tax Division and the United States Attorney's Office. (See Memorandum from Assistant Attorney General Kathryn Keneally dated September 18, 2012, entitled, "Expedited and Parallel Review of Proposed Indictments Arising from Stolen Identity Refund Fraud"). The Tax Division may, in consultation with the Stolen Identity Refund Fraud Working Group of the Attorney General's Advisory Committee, modify or supplement the procedures governing expedited review in Stolen Identity Refund Fraud prosecutions.

Second, this delegation reflects the Tax Division's supervisory authority over all matters arising under the Internal Revenue laws (see 28 C.F.R. §0.70(b)[2]), regardless of the level of participation in the Stolen Identity Refund Fraud investigation by the Internal Revenue Service, Criminal Investigation Division. However, it strongly encourages the participation of the Internal Revenue Service, Criminal Investigation Division, in Stolen Identity Refund Fraud investigations.[3]

Third, the application of this Directive is contingent upon the United States Attorney designating an attorney within the office to serve as a point of contact for Stolen Identity Refund Fraud cases ("USAO POC") who will be responsible for meeting the respective notice requirements set forth within this Directive. (See enumerated Paragraph 4 of this Directive).

Fourth, in all cases in which the United States Attorney seeks and obtains a federal criminal complaint against a person for offenses involving Stolen Identity Refund Fraud, any subsequent charging decision by way of indictment, information, superseding indictment, or superseding information must be authorized in advance by the Tax Division.[4]

Fifth, in all cases in which the United States Attorney applies for and obtains a seizure warrant for proceeds derived from crimes involving Stolen Identity Refund Fraud, Tax Division approval is required before forfeiture of the funds is made (either administratively or judicially) if refunds of legitimate taxpayers are at risk of being forfeited. (See enumerated Paragraph 7 of this Directive).

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[2] 28 C.F.R. §0.70(b): "Criminal proceedings arising under the internal revenue laws . . . are assigned to and shall be conducted, handled, or supervised by, the Assistant Attorney General, Tax Division," with a few specified exceptions. An offense is considered to arise under the internal revenue laws when it involves (1) an attempt to evade a responsibility imposed by the Internal Revenue Code, (2) an obstruction or impairment of the Internal Revenue Service, or (3) an attempt to defraud the Government or others through the use of mechanisms established by the Internal Revenue Service for the filing of internal revenue documents or the payment, collection, or refund of taxes.

For purposes of illustration, Stolen Identity Refund Fraud crimes generally implicate the following criminal statutes: 18 U.S.C. §286 (conspiracy as to false claims), 18 U.S.C. §287 (false claims), 18 U.S.C. §510 (Treasury check forgery), 18 U.S.C. §641 (theft of public money), 18 U.S.C. §1028 (identity theft), 18 U.S.C. §1028A (aggravated identity theft), 18 U.S.C. §1029 (access device fraud), 18 U.S.C. §1341 (mail fraud), 18 U.S.C. §1343 (wire fraud), 18 U.S.C. §1708 (theft or receipt of stolen mail) and/or 18 U.S.C. §1709 (mail theft by postal employee).

[3] Participation of the Internal Revenue Service, Criminal Investigation, will make available to the prosecution team tax return and return information pursuant to 26 U.S.C. §6103(h).

[4] Post indictment resolution of Stolen Identity Refund Fraud cases shall be consistent with Departmental policy.

Sixth, in all cases in which the United States Attorney applies for and obtains a seizure warrant for proceeds derived from crimes involving Stolen Identity Refund Fraud, any subsequent judicial forfeiture of the seized proceeds, whether through civil or criminal judicial process, must be authorized in advance by the Tax Division.

**Delegation**

By virtue of the authority vested in me by Part O, Subpart N of Title 28 of the Code of Federal Regulations (C.F.R.), particularly Section 0.70, regarding criminal proceedings arising under the internal revenue laws, for all offenses involving "Stolen Identity Refund Fraud," as hereinafter defined, and subject to the limitations set forth herein, authority is hereby conferred on all United States Attorneys to: (i) authorize tax-related grand jury investigations; (ii) file federal criminal complaints; and (iii) apply for seizure warrants for the forfeiture of criminally derived proceeds arising from Stolen Identity Refund Fraud crimes.

This delegation of authority is subject to the limitations set forth above and the following:

1. With respect to authorizing a tax-related grand jury investigation, the United States Attorney has determined, based upon the available information, that:

   (a) there exist articulable facts supporting a reasonable belief that a crime involving Stolen Identity Refund Fraud is being, or has been, committed; (USAM §6-4.211. B) and

   (b) a grand jury investigation is required to preserve evidence and witness testimony, to identify further culpable persons and protect government funds, or to initiate judicial process such as search warrants, arrest warrants, electronic surveillance, or compulsory orders.

2. With respect to the filing of a federal criminal complaint, the United States Attorney has determined, based upon the available information, that probable cause exists to believe that a person has committed a Stolen Identity Refund Fraud crime within his/her jurisdiction. (USAM §9-27.200).

3. The subject grand jury proceeding and/or charged defendant does not involve a person considered to have national prominence -- such as local, state, federal or foreign public official or a political candidate, members of the judiciary, a member of the clergy, representatives of the electronic or printed news media, an official of a labor union, and major corporations and/or their officers when they are the target (subject) of such proceeding.[5]

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[5] See Tax Division Directive Nos. 59 and 138.

4. Upon the opening of a tax-related grand jury investigation (or expansion of a non-tax grand jury investigation) to include Stolen Identity Refund Fraud crimes, the Special Agent in Charge, Internal Revenue Service, Criminal Investigation, or the USAO POC shall immediately notify the Tax Division, through electronic transmission, of the name of the grand jury investigation, the date of its inception (or expansion), the target(s) named, if any have been identified, and the tax years under investigation. If the USAO POC is the notifying party for any of the above, the USAO POC shall notify the Internal Revenue Service, Criminal Investigation, at the same time the Tax Division is notified. Upon receipt of notice and evaluation, the Internal Revenue Service, Criminal Investigation, may make a determination whether to join the investigation, thus permitting access to material that can only be disclosed pursuant to 26 U.S.C. §6103(h).[6]

5. The authority hereby delegated includes the authority to designate: the targets (subjects) and the scope of such tax-related grand jury inquiry, including the tax years considered to warrant investigation. This delegation also includes the authority for the United States Attorney to terminate such grand jury investigation, provided that prior written notification is given to both the Internal Revenue Service, Criminal Investigation, and the Tax Division. If the United States Attorney terminates a grand jury investigation involving Stolen Identity Refund Fraud crimes or de-targets subjects thereof, then the USAO POC shall indicate in its correspondence that such notification terminates the referral of the matter pursuant to 26 U.S.C. §7602 (c).

6. Upon the filing of a criminal complaint and/or application for a seizure warrant, in all Stolen Identity Refund Fraud cases, the United States Attorney shall, through his/her designated USAO POC, contemporaneously transmit an electronic copy of such pleading to the Tax Division to ensure that timely notice is made to the Chief of the appropriate Criminal Enforcement Section.

7. In Stolen Identity Refund Fraud cases involving application for a seizure warrant, actions of the United States Attorney shall be consistent with the procedures of the Internal Revenue Service, Criminal Investigation, concerning seizure of property and use of forfeiture process within criminal tax cases, except that approval of the Tax Division is not required prior to seizure.[7] **However, if refunds of legitimate taxpayers are at risk of being forfeited, Tax Division approval is required**

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[6] If the Internal Revenue Service, Criminal Investigation, is not involved in the Stolen Identity Refund Fraud investigation, then all grand jury notice responsibilities will default to the USAO POC. Otherwise, grand jury notice responsibilities will lie with the Special Agent in Charge, Internal Revenue Service, Criminal Investigation.

[7] Forfeiture procedures of the Internal Revenue Service, Criminal Investigation, are set forth at Sections 9.7.3 and 9.7.4 of the Internal Revenue Manual.

**before forfeiture of the funds is made either administratively or judicially.**

**Definition**

8. For purposes of this Directive, "Stolen Identity Refund Fraud" is defined as cases 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[8] 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. Stolen Identity Refund Fraud cases also include the negotiation (or attempted negotiation), possession, or transfer, of refund proceeds resulting from the above-defined scheme. (Examples of cases that fall within and outside the scope of this definition are set forth at Paragraphs 10 and 11 of this Directive.)

9. Stolen Identity Refund Fraud cases do not include situations in which the person whose personal identification information was used to make a fraudulent claim for tax refund intended such claim to be filed on his or another's behalf.

**Cases Within Delegation**

10. The types of cases within the scope of this Directive include, but are not limited to:

(a) a situation in which personal identification information is stolen from a non-culpable person and then used to make a fraudulent claim for tax refund benefitting someone other than the person to whom the personal identification information belongs;

(b) a situation involving a large-volume false claim scheme, in which a person sells to a third party, or agrees to let the third party use, his/her personal identification information unaware that the personal identification information will be used to make a fraudulent claim for tax refund. This includes when a person agrees to endorse a Treasury Check, having no knowledge that the check relates to a fraudulent tax return using the person's personal identification information. (But see Paragraph 11(d) of this Directive);

(c) a situation in which a return preparer makes and/or files a fraudulent claim for tax refund using non-client personal identification information that has been stolen or unlawfully used to make the claim. (But see Paragraph 11(d) of this Directive);

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[8] The term "person" is construed to mean an individual (including decedents, non-filing minors, and illegal aliens), a trust, estate, partnership, association, company or corporation.

(d) a situation in which a culpable person in schemes matching the above scenarios:

(i) receives, endorses, negotiates, utters, transfers, or cashes a refund check;
(ii) receives, possesses or transfers fraudulent refunds in bank accounts or through prepaid debit cards; or
(iii) makes ATM withdrawals from prepaid debit cards loaded with refunds.

**Exceptions To Delegation**

11. The types of cases outside the scope of this Directive include:

(a) a situation in which a culpable taxpayer files a fraudulent claim for refund using his own social security number but claims a false dependency exemption using another's social security number without lawful authority;

(b) a situation in which a return preparer alters the tax return of a client with or without the client's knowledge or consent, claiming a higher refund;

(c) a situation in which a return preparer and a client conspire to file a false tax return claiming an inflated refund;

(d) a situation in which a return preparer exploits or uses a client's (or potential client's) personal identification information without the client's (or potential client's) knowledge or consent, solely or in combination with other client (or potential client) information, to file a fraudulent claim for tax refund.

**Dates of Effectiveness**

12. This Directive shall be in effect for a period of two years, beginning on the date noted below.

Any case directly referred to a United States Attorney's office for a tax-related grand jury investigation, criminal complaint, and or seizure warrant involving Stolen Identity Refund Fraud which does not meet all of the requirements of this Directive, will be considered an improper referral and outside the scope of this delegation of authority. In no such case may the United States Attorney's office authorize a tax-related grand jury investigation or file a criminal complaint. Instead, the case must be forwarded to the Tax Division for authorization.

Authority to alter any actions taken pursuant to the delegations contained herein is retained by the Assistant Attorney General in charge of the Tax Division in accordance with the authority contained in 28 C.F.R. §0.70.

This Directive provides only internal Department of Justice guidance. It is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal. Nor are any limitations hereby placed on otherwise lawful litigative prerogatives of the Department of Justice.

Kathryn Keneally
Assistant Attorney General
Tax Division

APPROVED TO TAKE EFFECT ON: OCTOBER 1, 2012, AND TO EXPIRE, UNLESS FURTHER EXTENDED, ON OCTOBER 1, 2014.