Knox McLaughlin Gornall & Sennett, P.C.
Erie • Pittsburgh • Jamestown, NY
814-459-2800 • www.kmgslaw.com

Tax and Non-Tax Identity Theft Response

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The Internal Revenue Service (IRS) April 11, 2022 publication of Fact Sheet 2022-25, "When to file an Identity Theft Affidavit" serves as, unfortunately, a necessary reminder of how to deal with tax and non-tax related identity theft.

Tax related identity theft usually involves a lost or stolen Social Security number that is used to file a phony tax return and claim a fraudulent refund. If the IRS suspects a fraudulent return, it will send a letter to the taxpayer requesting additional information before processing the return.

Note that the IRS will send a letter. The IRS will never call the taxpayer.

The letter options are:

- Letter 5071C instructs the taxpayer to verify their identity via an online tool;
- Letter 4883C instructs the taxpayer to call the IRS; or
- Letter 5747C instructs the taxpayer to go, in person, to a Taxpayer Assistance Center, to verify their identity.

A taxpayer who believes him/herself to be the victim of a tax related identity theft, and who has not received a letter from the IRS, may send a Form 14039 Identity Theft Affidavit to the IRS.

Signs of tax related identify theft include:

- Inability to file a return because one has already been filed using the same Social Security number;
- Notice from a tax preparation company that an account, otherwise unknown to the taxpayer, has been created in the name of the taxpayer; or
- Notice of refund offset, when no refund is anticipated.

Once the IRS confirms the taxpayer has been the victim of tax related identity theft, it will confirm the taxpayer's identity and issue an identity protection personal identification number that will be used for e-filing the tax return.

Non-tax related identity theft involves fraudulently obtained credit cards, loans or other unauthorized non-tax activity. Signs of this type of identity theft include:

- Receiving bills from vendors that have not engaged;
- Receiving updated or modified payment instructions from vendors, purchasers, or sellers;
- Receiving notice of unemployment benefits for which no application has been made; or
- Receiving a W-2 or 1099 from a party that does not hire or engage the taxpayer, has made no payment to the taxpayer and the taxpayer has not received a notice from the IRS regarding the W-2 or 1099.

For non-tax related identity theft, individuals or businesses do not need to contact the IRS, but should move promptly to:

- Create an account on IdentityTheft.gov and take the action steps that are recommended;
- Call the companies where it is believed the fraud has occurred, close accounts and/or change log-in information;
- Contact one of the credit rating companies and create a fraud alert on the account;
- Get credit reports from the rating companies and contact them to remove incorrect data and block disputed information;
- Contact the local police with a copy of the identity theft report filed at IdentityTheft.gov; and
- Contact an attorney to explore potential legal remedies to protect or recover assets.

If you have questions about this topic, please contact Alex Cox.



Alexander K. Cox

Alexander K. Cox focuses his practice on litigating complex and commercial disputes in state and federal courts throughout the country. He also helps protect clients' intellectual property rights, including trakemarks, copyrights, and trade secrets.

acox@kmgslaw.com • 814-923-4912

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