



**Section of Taxation**

10th Floor  
740 15th Street, N.W.  
Washington, DC 20005-1022  
202-662-8670  
FAX: 202-662-8682  
E-mail: tax@abanet.org

July 22, 2010

Hon. Douglas Shulman  
Commissioner  
Internal Revenue Service  
1111 Constitution Avenue, N.W.  
Washington, DC 20224

Re: Comments on Notice 2009-93 Concerning the Pilot Program to Truncate Taxpayer Identification Numbers on Certain Payee Statements

Dear Commissioner Shulman:

Enclosed are comments on Notice 2009-93 concerning the pilot program to truncate taxpayer identification numbers on certain payee statements. These comments represent the views of the American Bar Association Section of Taxation. They have not been approved by the Board of Governors or the House of Delegates of the American Bar Association, and should not be construed as representing the policy of the American Bar Association.

Sincerely,

A handwritten signature in black ink, appearing to read "SML", written over a white background.

Stuart M. Lewis  
Chair, Section of Taxation

Enclosure

cc: Michael Mundaca, Assistant Secretary (Tax Policy), Department of the Treasury  
William Wilkins, Chief Counsel, Internal Revenue Service

**OFFICERS**

*Chair*

Stuart M. Lewis  
Washington, DC

*Chair-Elect*

Charles H. Egerton  
Orlando, FL

*Vice Chairs*

*Administration*

Fred T. Witt Jr.  
Phoenix, AZ

*Committee Operations*

Peter J. Connors  
New York, NY

*Communications*

Ellen P. Aprill  
Los Angeles, CA

*Government Relations*

Helen M. Hubbard  
Washington, DC

*Professional Services*

Emily A. Parker  
Dallas, TX

*Publications*

Douglas M. Mancino  
Los Angeles, CA

*Secretary*

Brian P. Trauman  
New York, NY

*Assistant Secretary*

Bahar Schippel  
Phoenix, AZ

**COUNCIL**

*Section Delegates to the*

*House of Delegates*

Paul J. Sax  
San Francisco, CA

Richard M. Lipton  
Chicago, IL

*Last Retiring Chair*

Vacant

*Members*

John P. Barrie  
New York, NY

Peter H. Blessing  
New York, NY

C. Wells Hall, III  
Charlotte, NC

Kathryn Keneally  
New York, NY

Christine A. Sloan  
Washington, DC

Walter Burford  
Atlanta, GA

Thomas J. Callahan  
Cleveland, OH

William H. Caudill  
Houston, TX

Leslie E. Grodd  
Westport, CT

Thomas R. Hoecker  
Phoenix, AZ

Alice G. Abreu  
Philadelphia, PA

Kevin D. Anderson  
Bethesda, MD

Joan C. Arnold  
Philadelphia, PA

Andrew J. Dubroff  
Washington, DC

Miriam L. Fisher  
Washington, DC

**LIAISONS**

*Board of Governors*

Lee S. Kolczun  
Sheffield Village, OH

*Young Lawyers Division*

Jackie J. Cook  
Detroit, MI

*Law Student Division*

Nicholas M. Furtwengler  
Chicago, IL

**DIRECTOR**

Christine A. Brunswick  
Washington, DC

**ABA SECTION OF TAXATION  
COMMENTS ON NOTICE 2009-93  
CONCERNING THE PILOT PROGRAM TO  
TRUNCATE TAXPAYER IDENTIFICATION NUMBERS  
ON CERTAIN PAYEE STATEMENTS**

These comments (“Comments”) are submitted on behalf of the American Bar Association Section of Taxation and have not been approved by the House of Delegates or Board of Governors of the American Bar Association. Accordingly, they should not be construed as representing the position of the American Bar Association.

Principal responsibility for preparing these Comments was exercised by Erica Brady and George Willis of the Low Income Taxpayers Committee of the Section of Taxation. Substantive contributions were made by Keith S. Blair. The Comments were reviewed by Kathryn Sedo, Committee Chair. The Comments were further reviewed by Joseph Barry Schimmel of the Section’s Committee on Government Submissions and by Alice G. Abreu, Council Director for the Low Income Taxpayers Committee.

Although the members of the Section who participated in preparing these Comments have clients who might be affected by the federal tax principles addressed by these Comments, no such member or the firm or organization to which such member belongs has been engaged by a client to make a government submission with respect to, or otherwise to influence the development or outcome of, the specific subject matter of these Comments.

Contacts:     Erica Brady  
                  Phone: (202) 775-1634  
                  Email: [exb@ferrarolaw.com](mailto:exb@ferrarolaw.com)

                  George Willis  
                  Phone: (714) 628-2531  
                  Email: [gwillis@chapman.edu](mailto:gwillis@chapman.edu)

Date:           July 22, 2010

## EXECUTIVE SUMMARY

These Comments are submitted in response to the solicitation for public comments by the Internal Revenue Service in Notice 2009-93, issued on November 19, 2009 (the “Notice”).<sup>1</sup>

The Notice created a pilot program that permits filers of certain information returns (forms in series 1098, 1099, and 5498) to truncate individual tax identification numbers on paper (but not electronic) payee statements. Truncation is being proposed as part of efforts by the Internal Revenue Service’s (the “Service”) to curb misuse and misappropriation of individual tax identification numbers, including the potential for the use of identification numbers to commit identity theft.

We commend the Service for its effort in helping reduce the misuse and misappropriation of individual tax identification numbers. We believe that the benefits of truncation of taxpayer identification numbers for individual payees outweigh any burdens it may place on filers. However, we are concerned that if the program to truncate individual identification numbers is not made mandatory and not expanded to include all payee statements then individual identification numbers will remain vulnerable to the threats that prompted the Service to begin truncating individual identification numbers on the paper payee statements specified in the Notice.

Specifically, we recommend that:

- Truncation on paper payee statements within the scope of the Notice should be required.
- Truncation should be required on paper payee statements not within the scope of the Notice.
- Truncation should be required for payee statements furnished electronically.
- Payees should have the ability to ask filers for (and filers should be required to provide) a payee statement with the complete individual identification number.

---

<sup>1</sup> 2009-51 I.R.B. 863.

## COMMENTS

### 1. Background.<sup>2</sup>

Information returns must be filed with the Service (to report certain payments made or received in a calendar year.<sup>3</sup> A filer is any person required to file an information return.<sup>4</sup> A payee is any person who is required to receive a copy of the information set forth on an information return by the filer of the return.<sup>5</sup> The copy of the statement provided to the payee is referred to as a “payee statement” for the purposes of these Comments. The statement must generally contain the same information as the information return filed with the Service.<sup>6</sup> Regulations, forms, and form instructions typically require that the payee statement include the identifying number of the payee.

The three types of identifying numbers applicable to individuals are social security numbers, Internal Revenue Service individual taxpayer identification numbers, and Internal Revenue Service adoption taxpayer identification numbers. All of these identifying numbers are nine-digits and are formatted as 000-00-0000.<sup>7</sup> For the purpose of these comments we use the term Tax Identification Number (“TIN”) to mean any of these three types of identification numbers.

The Service has acknowledged that an individual’s TIN is sensitive information and that there is a risk that this information could be taken from a payee statement. An individual’s TIN can be misused in various ways, including identity theft.<sup>8</sup> In order to minimize the risk of misuse of TINs, the Service has created a pilot program allowing truncation of the TIN on certain *paper* payee statements. This pilot program does not apply to all paper payee statements or to payee statements that are filed electronically.<sup>9</sup>

Under this pilot program, the Service will permit a taxpayer’s TIN to be truncated by replacing the first five digits of the nine digit number with asterisks (\*\*\*-\*\*) or X’s on paper payee statements subject to this pilot program.<sup>10</sup> This is similar to other steps that the Service has taken to prevent identity theft and to protect individual taxpayers’ personal information, including TINs. The Service has already implemented truncation of TINs in filings of Notices of Federal Tax Lien (“Liens”) that become public record when filed, by redacting all but the last four digits of the taxpayer’s TIN.<sup>11</sup> (Full TIN redaction on Liens would not be in compliance with section 6323(f)).<sup>12</sup>

---

<sup>2</sup> References to a “section” are to a section of the Internal Revenue Code of 1986, as amended (the “Code”), unless otherwise indicated.

<sup>3</sup> I.R.C. §§ 6041-6059; § 6724(d)(1); Reg. § 301.6721-1(g)(1).

<sup>4</sup> Reg. § 301.6721-1(g)(6).

<sup>5</sup> Reg. § 301.6721-1(g)(5).

<sup>6</sup> I.R.C. § 6724(d)(2); Reg. § 301.6722-1(d)(2).

<sup>7</sup> Reg. § 301.6109-1(a)(1)(i).

<sup>8</sup> Notice 2009-93 at Section 2. Background.

<sup>9</sup> Notice 2009-93 at Section 3. Scope.

<sup>10</sup> Notice 2009-93 at Section 4. Requirements.

<sup>11</sup> C.C.A. 2005-43-059 (September 28, 2005).

<sup>12</sup> I.R.C. § 6323(f).

## **2. Inconsistency in Truncation Among Different Entities.**

Before addressing the specific issues on which comments are requested by the Notice, we believe that it is important to note common inconsistencies with truncation of identifying numbers encountered with other government agencies and the private sector.

Misuse of TINs is a problem that has been encountered by other federal and state agencies, as well as private sector businesses including financial institutions. In the last decade, many of these groups have implemented procedures for redaction or truncation of TINs in order to minimize the chance of misappropriation and misuse of a person's identity. However, there is no universal standard as to which, or how many, of the nine digits should be truncated.

For example, the United States Bankruptcy Court requires that the first five digits of a person's social security number in filings made with the court be redacted.<sup>13</sup> The United States Tax Court differs in that its Rules of Practice and Procedure ordinarily require the complete redaction of all nine digits of a person's social security number in filings.<sup>14</sup>

In the private sector, the three major credit reporting agencies respond to millions of credit inquiries to consumers, marketers, and creditors each year. In responding to these inquiries, the agencies include the first five digits of a social security number on consumer credit reports, but redact the last four.<sup>15</sup> Many banks, credit card companies and other financial institutions use the last four digits of a social security number as a security question in both telephone and on-line customer service requests.<sup>16</sup> This suggests that entities in the private sector regard the last four digits of the social security number to be the critical part to confirm a person's identity.

We are concerned that the program covered by the Notice may not be as effective as is hoped because it will not prevent misuse of a TIN where a person is able to obtain the first five digits from a private sector source and match it with payee statements that contain the last four digits.

## **3. Truncation on paper payee statements within the scope of the Notice should be required.**

Notwithstanding some minor difficulties that are foreseen with implementation (discussed in section 7 below), we believe that truncation on paper statements covered by the Notice should be required.

Paper payee statements, including those not covered by the Notice, such as those used to report wages, are mailed to taxpayers and typically contain the payee's name,

---

<sup>13</sup> Fed. R. Bankr. P. 1005; *see also* Fed. R. Bankr. P. 9037.

<sup>14</sup> USTC Rule 27.

<sup>15</sup> Equifax, Inc., Experian Information Solutions, Inc., and TransUnion LLC.

<sup>16</sup> JPMorgan Chase & Co, Bank of America, N.A., American Express Company.

address, and TIN.<sup>17</sup> When combined with the other information reported on the statements, they give a potential identity thief not only a revealing look into the payee's life, but also many pieces of the puzzle of assuming the identity of another or reselling that information to third persons.

Non-delivery and mis-delivery of paper statements is a primary concern. Members of the Low Income Taxpayers Committee who participated in the preparation of these Comments work in legal clinics, and note that their clients include taxpayers who are especially prone to having jobs that are temporary or who are transient. Taxpayers in this community often move in order to follow seasonal work opportunities and can work for many different payors in a tax year. As a result, paper payee statements are often delivered to an address that is no longer the residence of the payee. Typically, when the intended recipient of a payee statement moves, the payee does not notify the payor of his or her change of address and does not file a change of address with the United States Post Office. Consequently, the then-current resident of the address receives the payee statements. A conscientious unintended recipient may attempt to return the statement to the payor; however, clinicians often find that the statements are simply discarded, leaving a payee's TIN and other personal information vulnerable to misuse. Even in cases where the payee has not moved, incidents of mail theft and non-delivery of mail is a problem in some communities. Mail theft is the most common crime investigated by the United States Postal Service's Office of Inspector General.<sup>18</sup> Mail theft most often occurs at multiple mailbox locations, such as apartment panels.<sup>19</sup>

Truncation of the payee's TIN is just one step in protecting this personal information, and therefore we recommend the requirement of truncation, rather than the mere permission of it. If truncation of TINs is merely permitted rather than required, we believe that many filers will not implement truncation, and the Service's goal of reducing TIN misuse will not be furthered.

#### **4. Truncation should be required on paper payee statements not within the scope of the Notice.**

Truncation of TINs should be required for all paper payee statements, not just those covered by the Notice. Of the payee statements not included in the Notice, Form W-2 is the most common and widely distributed payee statement to individuals. Failing to require truncation of TINs on Form W-2 as a form that payors may truncate TINs for will greatly reduce the effectiveness of truncation as a means of protecting the identities of individuals for all of the reasons stated above.

---

<sup>17</sup> I.R.C. § 6041A(F)(2).

<sup>18</sup> Lois M. Davis, Michael Pollard, Jeremiah Goulka, Katherine Mack, Russell Lundberg, Paul Steinberg, *The Role of the United States Postal Service in Public Safety and Security Implications of Relaxing the Mailbox Monopoly*, RAND (2008), available at [http://www.rand.org/pubs/monographs/2008/RAND\\_MG800.pdf](http://www.rand.org/pubs/monographs/2008/RAND_MG800.pdf).

<sup>19</sup> *Id.*

**5. Truncation should be required for payee statements furnished electronically.**

The delivery of payee statements electronically does not necessarily reduce the rates of non-delivery and misappropriation of TINs; therefore, the Notice should be expanded to include electronic payee statements as well. Requiring truncation for electronic statements would help to ensure that TINs are not inadvertently disclosed by filers to unauthorized third-parties while attempting to comply with information reporting requirements.

Electronic receipt of information statements by payees typically involves delivery by way of electronic mail (“email”) or by the downloading of information through a payor’s website. Delivery of statements by either manner is inherently insecure. Incidents of hacking, spoofing, insecure connections, open Wi-Fi (wireless internet connections that are susceptible to radio interception), computer viruses designed to steal information, malware (malicious software that is used to control a person’s computer), web browser history misuse and other problems in security are common. There have even been reported incidents of hacking by organized crime syndicates and unfriendly governments.<sup>20</sup>

Not only should truncation of TINs be permitted on payee statements that are delivered electronically, but truncation should be required. If truncation of TINs is merely permitted rather than required in the case of electronic delivery of return information, we believe that many filers will disregard truncation and the goal of the Service to reduce TIN misuse will not be furthered. Therefore, final rules on the truncation of TINs should require the truncation of TINs on both paper and electronic payee statements.

**6. Payees should have the ability to ask filers for (and filers should be required to provide) a payee statement with the complete identifying number.**

There may be instances where it is important for an individual to have a statement that has not been truncated. For example, if there is an allegation of fraud, mistake or error, having the full TIN on an official statement would help the payee to investigate the allegation. We envision many non-tax situations where a more detailed verification of income and identification may be necessary, including income verification for loan and credit applications, and background checks for employment or security clearances. In these situations, if an individual has a common name, such as “John Smith,” it may be important for that person have more detailed substantiation to demonstrate that he is the “correct” John Smith. Similarly, when members of the same household have the same, or very similar, legal names and possibly similar TINs, confusion could arise about who the correct payee is. Having a payee statement that contains the entire TIN would be especially important to such individuals and would help with tax compliance.

---

<sup>20</sup> Testimony of Alan Paller of the SANS Institute before the U. S. Senate Committee on Homeland Security and Government Affairs, *Cyber Security: Developing a National Strategy*, April 28, 2009, available at <http://hsgac.senate.gov/public/ files/042809Paller.pdf>.

**7. Difficulties for filers and/or payees.**

Information returns and payee statements may be completed one-by-one by hand or may be generated in bulk by sophisticated accounting software or payroll services companies. They may be delivered in paper or electronic format. The persons required to file these forms can range from unsophisticated individuals who are infrequently required to file, to large corporations which are responsible for filing thousands of information returns and delivering thousands of payee statements annually.

For the filer who manually generates payee statements, the pilot program should present no compliance difficulties. However, compliance with the pilot program might be difficult for filers that use software to generate their information returns and payee statements if currently available software does not permit truncation. To insure that this is not a problem, we recommend a delayed effective date for mandatory truncation of TINs, so that software manufacturers have time to release products that comply with the protocols required by the Service. Even if there is a delayed effective date for mandatory truncation, voluntary truncation should be allowed for all payee statements expeditiously.

We believe that the benefits of truncation of TINs for individual payees outweigh the small burden it may place on filers.

**8. Conclusion.**

By permitting filers to truncate identification numbers on payee statements, the Service has taken an important step in protecting taxpayer information and preventing identity theft. This step can be enhanced if the Service not only permits but requires truncating taxpayer identification numbers and extends the requirement to cover additional taxpayer statements.

We believe that truncation of individuals' TIN information will help reduce the number of identity theft victims. That reduction will not only benefit taxpayers but it will also allow the Service and other law enforcement agencies to save resources in the investigation and resolution of identity theft cases. We also believe that the benefits of truncation of TINs for individual payees outweigh any burdens it may place on filers.