April 2, 2012

The Honorable Max S. Baucus
Chairman
Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20510-6200

The Honorable Dave Camp
Chairman
House Committee on Ways & Means
1102 Longworth House Office Building
Washington, DC 20515

The Honorable Orrin G. Hatch
Ranking Member
Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20510-6200

The Honorable Sander Levin
Ranking Member
House Committee on Ways & Means
1102 Longworth House Office Building
Washington, DC 20515

Re: Options for Tax Reform to Amend Code Section 6103(e) of the Internal Revenue Code

Dear Chairmen and Ranking Members:

Enclosed please find a description of options for tax reform to amend code section 6103(e) of the Internal Revenue Code. These options for tax reform are submitted on behalf of the American Bar Association Section of Taxation and have not been approved by the House of Delegates or the Board of Governors of the American Bar Association. Accordingly, they should not be construed as representing the position of the American Bar Association.

These options are submitted as part of a series of tax reform options prepared by the American Bar Association Section of Taxation, the objectives of which are to improve the tax laws and to make them simpler to understand and administer.

The Section would be pleased to discuss the options with you or your staffs if that would be helpful.

Sincerely yours,

William M. Paul
Chair, Section of Taxation

Charles H. Egerton
Last Retiring Chair, Section of Taxation

Enclosure

cc: Mr. Russell Sullivan, Majority Staff Director, Senate Finance Committee
Mr. Christopher Campbell, Minority Staff Director, Senate Finance Committee
Mr. Jon Traub, Majority Staff Director, House Ways and Means Committee
Ms. Janice A. Mays, Minority Chief Counsel, House Ways and Means Committee
Mr. Thomas A. Barthold, Chief of Staff, Joint Committee on Taxation
Honorable Emily S. McMahon, Acting Assistant Secretary (Tax Policy), Department of the Treasury
Honorable William J. Wilkins, Chief Counsel, Internal Revenue Service
Honorable Douglas H. Shulman, Commissioner, Internal Revenue Service
AMERICAN BAR ASSOCIATION
SECTION OF TAXATION

OPTIONS FOR TAX REFORM
TO AMEND CODE SECTION 6103(e)
OF THE INTERNAL REVENUE CODE

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

These Options are submitted as part of a series of tax reform options from the American Bar Association Section of Taxation, the objectives of which are to improve the tax laws and to make them simpler to understand and to administer.

These Options were prepared by individual members of the Low Income Taxpayers Committee of the Section of Taxation. Principal responsibility for preparing this legislative proposal was exercised by Keith Fogg, Susan Morgenstern and George Willis, the Chair and Vice Chairs of the Low Income Taxpayers Committee. These Options were reviewed by Joseph Barry Schimmel on behalf of the Section’s Committee on Government Submissions and by Alice G. Abreu, Council Director for the Low Income Taxpayers Committee.

Although members of the Section of Taxation who participated in preparing these Options have clients who may be affected by the proposals addressed in these Options or have advised clients on the application of such principles, 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 Options.

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Date: April 2, 2012
EXECUTIVE SUMMARY

These Options suggest consideration of an amendment to section 6103 of the Internal Revenue Code to provide taxpayer access to their own tax account information.1 Currently, the Internal Revenue Service (the “Service”) is restricted as to the information it may provide to taxpayers when their identification number has been compromised. These restrictions impair taxpayers’ ability to resolve account issues when non-owners’ tax information is associated with their account.

The current disclosure rules are inflexible and are insufficient in this era where taxpayer identification numbers are increasingly subject to the misappropriation and misuse commonly referred to as “identity theft.” Their protection is inadequate in the case of identity theft, because these rules constrict taxpayers’ rights by denying them access to all information associated with their own taxpayer identification numbers. Taxpayers need this access to resolve discrepancies contained in their tax accounts.

Section 6103(a) creates a general rule that the return or return information of a taxpayer cannot be disclosed. There are various exceptions to this rule. The exceptions enumerated under section 6103(e) allow the Service to provide return or return information to persons with a material interest in that information; Congress might consider adding one more.

Current section 6103(e) authorizes disclosure of a taxpayer’s tax account information in ten enumerated circumstances to persons having a material interest in the information including, in paragraph (1), to the taxpayer. However, in situations where the Service learns that a taxpayer’s identification number has been compromised, the Service restricts access to the account information, and does not inform the taxpayer about information that may be posted to that taxpayer’s account – even though the Service knows that the information the taxpayer seeks is in that taxpayer’s account.

In these situations, the taxpayer’s inability to see all of the information reported on that tax account prevents the taxpayer from knowing the full extent of the information – erroneous and/or correct – that the Service associates with that account. It also hinders the taxpayer in assisting the Service to remedy the account discrepancies.

Authorizing the Service to disclose to taxpayers all of the tax return information reported on their account will benefit both the taxpayers and the Service. Access to the complete information in the account should improve federal tax administration by making resolution of erroneous tax account information more efficient. As an option to achieve tax reform, Congress might consider amending the disclosure provisions of section 6103(e) to allow two additional specific exceptions to authorize disclosure of taxpayer information where a taxpayer’s identification information has been misused or compromised.

1 Unless otherwise indicated, all references to a “section” are to a section of the Internal Revenue Code of 1986, as amended (the “Code”).
OPTIONS FOR REFORM

1. Background & Present Law.
   a. Background.

   Tax related misuse of taxpayer identification numbers, commonly referred to as “identity theft,” is a growing concern in the administration of the federal tax system. The two most common types of identity theft occur when an individual’s taxpayer identification number is used by another to either file a false tax return with the intention of obtaining an unauthorized refund, or to gain employment in situations where the individual does not otherwise have a valid taxpayer identification number.

   The misuse of identifying information has become a serious problem in the United States. The National Taxpayer Advocate (NTA) maintains that identity theft stands as one of the biggest problems facing taxpayers. She has addressed this problem in every one of her annual reports dating back to 2004. The number of identity theft cases opened by the Service has grown dramatically in the past three years. The charts and table below graphically illustrate the growth of the problem:

   ![Tax-Related Identity Theft Chart]

   *Chart 1: Tax Related Identity Theft*


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The Service has taken steps to address the escalating number and increasing complexity of identity appropriation matters. Most notably, the Service established the Identity Protection Specialized Unit (IPSU) to serve taxpayers whose identification numbers have been compromised, or which may become compromised in the future. IPSU works with other IRS functions to attempt to resolve the consequences of taxpayer identification number misuse.
Other steps include placing identity theft tracking indicators on certain accounts, and providing identity protection personal identification numbers to the true taxpayer identification number owner. There are also front-end filters in place to flag returns during tax return processing which contain previously compromised taxpayer identification numbers.

Finally, the Service also communicates by mail with taxpayers who contact the Service regarding misuse of their taxpayer identification number. The purpose of this correspondence is to confirm that the Service is communicating with the true owner of the compromised identifying number and not disclosing protected information to persons other than the rightful owner of the taxpayer identification number.

b. Present Law.

Current sections 6103(e)(1) and (7) allow the Service to provide return and return information to the taxpayer where the taxpayer or the taxpayer’s designee requests it. The presumption is that the account information is the taxpayer’s, whether it reported by the taxpayer or an entity with third party reporting responsibility as to that taxpayer.

When a taxpayer’s account contains compromised information that the taxpayer attributes to an unauthorized third party, the Service does not disclose that information to the taxpayer because it takes the position that such information is outside the scope of the exceptions to disclosure provided in section 6103(e)(1) and (7). This leaves the taxpayer significantly handicapped in trying to resolve the problem.

2. Reason Changes Are Needed.

Taxpayers need to review and evaluate all of the information the Service acquires regarding their personal identification number in order to report their income correctly and pay the correct tax. The current scheme prevents the Service from making that disclosure, as two common situations illustrate.

The first situation arises when a person files a tax return using another person’s identifying number before the rightful “owner” of the tax identification number has filed. In those cases, the Service does not accept the subsequent e-filed return from the rightful taxpayer. The Service simply informs the return transmitter that the taxpayer identification number has been used on a previously filed return, but the Service will not release information as to how, where or when that number was used, or even what information was contained on that first return. The taxpayer must submit a paper return to the Service, with the hope that the Service will accept it. However, the Service may not process the subsequently filed paper return, because it perceives it to be a duplicate return. Alternatively, the Service may treat the subsequent tax return as a corrected return or as an amended return, depending on its submission date. The Service may process the paper tax return as the true return if the taxpayer submits the Service’s Form 14039, Identity Theft Affidavit, with the return.

The second situation arises where the Service withholds information from a taxpayer once that taxpayer reports to the Service that the taxpayer’s identifying
information has been used by another person. This situation typically arises after the taxpayer files the tax return and the Service subsequently matches information returns with the return itself. The Service is precluded from disclosing information to a taxpayer that does not belong to that taxpayer, even where the Service cannot attribute its ownership. The taxpayer cannot obtain that account information from the Service in order to refute it.

Ironically, the very act of reporting a compromised identification number prevents the taxpayer from being able to obtain from the Service the information necessary to correct the erroneous information linked to that number. The Service did not create this Catch-22. Nothing in section 6103 authorizes the disclosure to a taxpayer of the erroneous tax information obtained from unauthorized users of the taxpayer’s identification number.

Analogous problems with disclosure issues have previously arisen and been addressed by disclosure exceptions authorized in sections 6103(e)(8) and (9). The identification misuse issues outlined above may be similarly resolved by a further amendment to 6013(e).

Section 6103(e)(8) covers situations where a joint return was filed but the filers are now divorced or no longer live together. In these situations, the unity of interests that existed at the time of tax return filing has disappeared. This paragraph put into place an exception allowing disclosure of certain information concerning “another” taxpayer – here a former spouse. The Service may inform each spouse of payments on the joint liability, so that each knows the outstanding amount of the liability for which they are both liable.

Similarly, section 6103(e)(9) addresses the situation in which multiple parties share liability under section 6672 for failing to pay over trust funds to the Service. These individuals are distinct taxpayers but share the section 6672 liability, and the payment by one impacts the outstanding balance of all. By enacting section 6103(e)(9), Congress created an exception allowing disclosure of certain information and treating each party, mutually, as a “material” party for the parties with respect to the tax return information. This information includes who has been determined liable for the section 6672 liability,

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3 Disclosure of collection activities with respect to joint return
If any deficiency of tax with respect to a joint return is assessed and the individuals filing such return are no longer married or no longer reside in the same household, upon request in writing by either of such individuals, the Secretary shall disclose in writing to the individual making the request whether the Secretary has attempted to collect such deficiency from such other individual, the general nature of such collection activities, and the amount collected. The preceding sentence shall not apply to any deficiency which may not be collected by reason of section 6502.

4 Disclosure of certain information where more than 1 person subject to penalty under section 6672
If the Secretary determines that a person is liable for a penalty under section 6672(a) with respect to any failure, upon request in writing of such person, the Secretary shall disclose in writing to such person—
(A) the name of any other person whom the Secretary has determined to be liable for such penalty with respect to such failure, and
(B) whether the Secretary has attempted to collect such penalty from such other person, the general nature of such collection activities, and the amount collected.
whether collection efforts have occurred with respect to the other liable parties, and the amount collected on the liability.

In the case of identity theft the liability to obtain return information from the service can place taxpayers in situations of hardship. As the taxpayer tries to navigate the tax system, that taxpayer confronts the laws which limit the Service’s ability to disclose to that rightful taxpayer information relative to the return and the information returns of the wrongful user’s tax return.

Resolution of these problems is, in part, augmented by the limitations on the ways in which the Service will recognize the identity of the true taxpayer, and consequently, the information that it may provide to the taxpayer. By way of background, Service employee actions are largely guided by the detailed instructions contained in the Internal Revenue Manual (“IRM.”) The relevant IRM guidelines require that employees adhere to specific disclosure steps when releasing account information. These steps include requesting the taxpayer’s name as it appears on the tax return, the taxpayer’s address as it appears on the return (or as the taxpayer updated through subsequent returns or address change notifications), the taxpayer’s social security number, the type of return, tax, and refund amount, taxpayer’s date of birth and/or filing status, and other taxpayer-specific information that the Service may request.

3. Options for Consideration.

The current system is frustrating both to the Service and to the taxpayer whose taxpayer identification number has been compromised. The Service expends already limited resources carefully determining which information it may and may not disclose to a victimized taxpayer, in order to avoid violations of the current disclosure laws; often, the very information that it cannot currently disclose may help resolve errors in tax administration or assist taxpayers in the investigation of personal identity theft.

In order to alleviate these problems, Congress might consider the creation of a mechanism to allow certain disclosures of tax return, return information, and tax account information to taxpayers who are or who may be subject to the misuse of their taxpayer identification number.

Using a model already in place under section 6103(e), a new section 6103(e)(10) might be created to treat taxpayers whose tax and/or personal identification has been misappropriated as parties with a “material interest.” This addition would authorize the Service to disclose all information which has been posted to or associated with a taxpayer’s account to the owner of the taxpayer identification number. The new paragraph might provide as follows:

8 Communications & Liaison, I.R.M. (CCH) ¶ ____, at 16,203.
9 Where an IRS employee still doubts the identity of the requestor, unlisted sections of the IRM direct employees to ask for additional verification including: the taxpayer’s place of birth, the taxpayer’s parents’ names, and other information that may be obtained from shared data bases. (Note that these additional verification questions are not revealed to the public.) See I.R.M. 11.6.2.4.2.5.2.1, for internal reference only.
10 A paragraph (10) of section 6103(e) currently exists. This proposal contemplates moving current paragraph (10) to paragraph (11), because this proposal bears a close relationship in purpose to current paragraphs (8) and (9).
(10) Disclosure of certain information where a taxpayer’s identifying information has been compromised. Where information has been posted to or associated with a taxpayer’s account, the Secretary shall disclose to the taxpayer upon request -

(A) Any tax return and return information using the taxpayer’s identifying information, and

(B) Any information return using the taxpayer’s identifying information.

A statutory provision authorizing the Service to make the necessary disclosures to the person whose identity has been misused will help remedy the present situation of stymied and incomplete resolution. It will relieve taxpayers of the painful and expensive guessing of what information was reported to the Service by a misuser and how that information may adversely impact them. The Service should have the tools available to assist the taxpayer who is the victim of identity misappropriation. Removing disclosure barriers will benefit both the tax system and the taxpayer by enabling both parties to fully resolve these identity issues.