

DEPARTMENT OF THE TREASURY
EXECUTIVE OFFICE FOR ASSET FORFEITURE

DIRECTIVE NO. 39

DATE: May 29, 2014

SUBJECT: Tax Refund Fraud Cases

1. **PURPOSE.** This Department of the Treasury Executive Office for Asset Forfeiture (TEOAF) Directive No. 39 establishes policies and procedures that govern fraudulently obtained tax refunds that become the subject of a seizure or forfeiture investigation. Coordination of tax refund fraud investigations, particularly those involving identity theft,¹ is paramount in ensuring that victimized taxpayers are expeditiously remedied and losses to the Government are minimized.

2. **SCOPE.** This Directive applies to all seizing agencies participating in the Treasury Forfeiture Fund (TFF).

3. **POLICY.** TFF participating agencies are required to follow the guidance provided in this Directive. In cases where assets are seized or forfeited in connection with a fraudulent tax refund scheme, TFF participating agencies shall ensure that proper notice is provided to the Internal Revenue Service (IRS) so that they may be afforded the opportunity to file a petition for remission. Funds forfeited in connection with a fraudulent tax refund scheme generally shall not be available for purposes of equitable sharing unless: (i) the IRS has affirmatively stated it will not file a petition for remission for such funds, or the time to do so has elapsed after issuance of timely notice by the TFF participating agency; or (ii) the amount forfeited exceeds the loss incurred by the U.S. Treasury General Fund as a result of the fraudulent activity.

4. **RESPONSIBILITIES.** All TFF participating agencies shall take reasonable steps to facilitate the prompt return of funds forfeited pursuant to a fraudulent tax refund scheme to the U.S. Treasury General Fund. TFF participating agencies are permitted to equitably share such funds only when all victim petitions have been handled and all obligations under this Directive have been fulfilled. TFF participating agencies are required to track all investigations covered by this Directive. Such tracking shall enable the agency to identify every seizure that falls within the purview of this Directive and to provide TEOAF with documentation that verifies that the instructions in this Directive have been followed, if such a request is made.

IRS Criminal Investigation (CI) is required to coordinate these efforts with the civil components of the IRS.

5. **PROCEDURES.**

A. **Generally**

(1) In Lieu of Seizure or Forfeiture in Appropriate Cases, TFF Participating Agencies Shall Support IRS Civil Processes to Return Proceeds from Refund Fraud Schemes to the Treasury

¹ Tax refund fraud is often perpetrated by identity theft. The filing of a fraudulent Federal tax return causes a loss to the Government and affects the victim taxpayer both financially and emotionally.

General Fund. The IRS External Leads² process is an administrative, expedited process which allows IRS to return erroneously issued refunds to the general fund and take corrective actions to protect taxpayers and prevent future losses to the Government. Using this process in lieu of, or in conjunction with, a criminal investigation also allows for law enforcement agencies to eliminate the time and resources required to execute seizure warrants, complete forfeiture proceedings and satisfy the requirements of the petition for remission process.

The TFF participating agency shall utilize the External Leads process in lieu of seizure when the process would not unduly halt or compromise an investigation or forfeiture that is already underway. External Leads should be utilized only when proceeds are not at imminent risk of loss, such as when bank accounts have been frozen by the financial institution.

(2) TFF Participating Agencies Shall Ensure that the IRS is Treated as a Potential Victim in All Forfeiture Actions Involving Fraudulent Income Tax Refunds. In some instances, the IRS may be unable to take unilateral action to recover a fraudulently obtained refund utilizing its External Leads process, or the External Leads process may not have been sought because of its potential to unduly halt or compromise an investigation or forfeiture that was already underway. In such instances, the TFF participating agencies shall ensure that IRS receives prompt and timely notice of IRS's opportunity to file a petition for remission for the forfeited funds consistent with this Directive. No undocumented costs or fees shall be deducted from amounts to be remitted to the IRS in these cases. However, reasonable, proper and documented costs may be deducted, as would be from any other victim remission payment.

(3) TFF Participating Agencies Shall Ensure IRS Inclusion in Restitution and Restoration Requests Granted by the Department of Justice, Asset Forfeiture & Money Laundering Section (AFMLS). In instances where the IRS is unable to recover funds as discussed in 5.A(1) and (2), TFF participating agencies shall work with the United States Attorney's Office (USAO) to ensure that IRS is included in restitution orders in cases where fraudulent refunds have been issued and the funds lost. Investigations that reveal refund crimes often result in losses to the Government which will not be recovered by other IRS methods. Restitution allows for the possibility to recover the lost funds. In some cases where a forfeiture occurred, a defendant may be ordered to pay restitution to IRS in a refund fraud case, and AFMLS may grant a USAO request to use the forfeited funds to satisfy the restitution order. In such cases, the seizing agency shall coordinate with IRS to ensure that TEOAF and the National Finance Center (NFC) are instructed to electronically transfer the funds via IPAC to the clerk of the court³ with any appropriate case identification markings. Per Treasury payment policy, checks will not be issued to IRS.

B. Required Notices

(1) Upon Initiation of an Investigation Involving Fraudulently Obtained Federal Income Tax Refunds. As soon as practicable, the TFF participating agency shall notify their local IRS-CI Identity Theft Coordinator. The agency shall provide the Coordinator with any information that may assist the IRS in recovering any fraudulently disbursed funds and prevent additional fraudulent refunds from being released.

² The External Leads process includes canceling Treasury checks through Treasury Financial Management Services (FMS) and adjusting taxpayers' accounts at IRS. IRS will activate identity theft indicators to prevent future "bad" or fraudulent refunds from being issued. As part of this process, the IRS-External Leads team will determine if suspicious funds in a bank account are from erroneously issued Federal tax refunds. Based on that determination, the IRS-External Leads team will provide the bank a "letter of indemnification." This letter essentially shifts any legal liabilities to the IRS, protecting the bank from any legal actions that may be taken by the account holder.

³ In a restoration, the court then forwards the payment to the victim listed in the restitution order.

(2) Upon Seizure of U.S. Treasury Tax Refund Checks or Funds That are Believed to be Traceable to a Fraudulent Federal Income Tax Refund. As soon as practicable, upon seizure of U.S. Treasury Tax Refund checks, prepaid access devices, bank accounts, or virtual currency associated with tax fraud investigations, TFF participating agencies shall notify their local IRS-CI Identity Theft Coordinator. The agency shall provide the Coordinator with any information that may assist the IRS in recovering the funds.

(3) Upon Initiation of Forfeiture Action Against Funds Traceable to a Fraudulently Obtained Federal Income Tax Refund. Regardless of whether the forfeiture is being conducted judicially or administratively, TFF participating agencies shall send written notices of IRS's right to file a petition for remission to:

Internal Revenue Service
Petition for Remission
Attn: Advisory
801 N Broadway, MDP 53
Nashville, TN 37203

Notices shall include as much information as possible, including taxpayer names, SSNs, dates of birth and addresses, refund method, as well as any applicable financial institution information such as bank routing and account numbers, check numbers, debit card numbers and the associated account numbers, and dates of deposit. The TFF participating agencies shall also provide the IRS with background information, such as the seizure warrant affidavit, or any other documentation that may facilitate the filing of a petition and enable the IRS to correct the taxpayers' accounts who have been victims of ID theft.

The TFF participating agency is encouraged to honor all reasonable requests by the IRS for additional time to submit a petition for remission. If the IRS a) fails to respond to the notice, b) fails to respond to the notice in a timely manner, or c) declines to file a petition, the TFF participating agency shall document the relevant facts and place that documentation in the file pertaining to the seizure at issue. A copy of the documentation shall also be included with any related equitable sharing package, and the package shall be flagged in a way that clearly alerts TEOAF personnel that the forfeiture involves funds derived from a fraudulently obtained Federal income tax refund.

C. Report to TEOAF

Upon request, TFF participating agencies shall provide TEOAF with a report listing all equitable sharing requests that involve assets related to fraudulently-obtained Federal income tax refunds.

6. AUTHORITY. 31 U.S.C. § 9703; 18 U.S.C. § 981(d); Treasury Directive 27-03, "Organizations and Function of the Office of the Assistant Secretary (Enforcement)"; Delegation Memorandum dated May 19, 1995, "Technical Correction to EOAF Delegation of Authority"; and Treasury Order 102-14, March 24, 2007, "Delegation of Authority with Respect to the Department of the Treasury Forfeiture Fund."

7. INFORMATION CONTACT. Any inquiries pertaining to this Directive should be directed to the TEOAF Legal Counsel at (202) 622-9600.

8. EFFECTIVE DATE. May 29, 2014.