

Tax News and Industry Updates

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IRS Statement on the Get Transcript Application

Cross References

- www.irs.gov (May 26, 2015)

On May 26, 2015, the IRS announced that criminals used taxpayer-specific data acquired from non-IRS sources to gain unauthorized access to information on approximately 100,000 tax accounts through IRS' "Get Transcript" application. This data included Social Security information, date of birth, and street address.

These third parties gained sufficient information from an outside source before trying to access the IRS site, which allowed them to clear a multi-step authentication process, including several personal verification questions that typically are only known by the taxpayer. The matter is under review by the Treasury Inspector General for Tax Administration as well as the IRS' Criminal Investigation unit, and the Get Transcript application has been shut down temporarily. The IRS will provide free credit monitoring services for the approximately 100,000 taxpayers whose accounts were accessed. In total, the IRS has identified 200,000 total attempts to access data and will be notifying all of these taxpayers about the incident.

The IRS determined that unusual activity had taken place on the application, which indicates that unauthorized third parties had access to some accounts on the transcript application. Following an initial review, it appears that access was gained to more than 100,000 accounts through the Get Transcript application.

In this sophisticated effort, third parties succeeded in clearing a multi-step authentication process that required prior personal knowledge about the taxpayer, including Social Security information, date of birth, tax filing status and street address before accessing IRS systems. The multi-layer process also requires an additional step, where applicants must correctly answer several personal identity verification questions that typically are only known by the taxpayer.

The IRS temporarily shut down the Get Transcript application after an initial assessment identified questionable attempts were detected on the system in mid-May. The online application will remain disabled until the IRS makes modifications and further strengthens security for it.

The matter is under continuing review by the Treasury Inspector General for Tax Administration and IRS offices, including Criminal Investigation.

The IRS notes this issue does not involve its main computer system that handles tax filing submission; that system remains secure.

On the Get Transcript application, a further review by the IRS identified that these attempts were quite complex in nature and appear to have started in February and ran through mid-May. In all, about 200,000 attempts were made from questionable email domains,

with more than 100,000 of those attempts successfully clearing authentication hurdles. During this filing season, taxpayers successfully and safely downloaded a total of approximately 23 million transcripts.

In addition, to disabling the Get Transcript application, the IRS has taken a number of immediate steps to protect taxpayers, including:

- Sending a letter to all of the approximately 200,000 taxpayers whose accounts had attempted unauthorized accesses, notifying them that third parties appear to have had access to taxpayer Social Security numbers and additional personal financial information from a non-IRS source before attempting to access the IRS transcript application. Although half of this group did not actually have their transcript account accessed because the third parties failed the authentication tests, the IRS is still taking an additional protective step to alert taxpayers. That's because malicious actors acquired sensitive financial information from a source outside the IRS about these households that led to the attempts to access the transcript application.
- Offering free credit monitoring for the approximately 100,000 taxpayers whose Get Transcript accounts were accessed to ensure this information isn't being used through other financial avenues. Taxpayers will receive specific instructions so they can sign up for the credit monitoring. The IRS emphasizes these outreach letters will not request any personal identification information from taxpayers. In addition, the IRS is marking the underlying taxpayer accounts on their core processing system to flag for potential identity theft to protect taxpayers going forward, both now and in 2016.

These letters will include additional details for taxpayers about the credit monitoring and other steps. At this time, no action is needed by taxpayers outside these affected groups.

The IRS is continuing to conduct further reviews on those instances where the transcript application was accessed, including how many of these households filed taxes in 2015. It's possible that some of these transcript accesses were made with an eye toward using them for identity theft for next year's tax season.

The IRS emphasizes this incident involves one application involving transcripts. It does not involve other IRS systems, such as the core taxpayer accounts or other applications, such as "Where's My Refund."



Gambling Safe Harbor

Cross References

- Notice 2015-21

Losses from gambling are allowed only to the extent of the gains from such transactions [IRC §165(d)]. The Internal Revenue Code does not define the term "transaction." Under old IRS guidance, a taxpayer calculates winnings or losses at the time tokens are redeemed for cash. With the increased use of electronic gambling, the use of tokens by slot machine players in many cases has been replaced by various electronic payment methods. As a result, the IRS is proposing a new safe harbor method for determining what constitutes a session of play for purposes of calculating gambling gains or losses from electronically tracked slot machine transactions.

Under the new proposed safe harbor, the IRS will not challenge a taxpayer's use of the definition of a session of play if the taxpayer complies with the following:

- The taxpayer recognizes a wagering gain if, at the end of a single session of play, the total dollar amount of payouts from electronically tracked slot machine play during that session exceeds the total dollar amount of wagers placed by the taxpayer on electronically tracked slot machine play during that session.
- The taxpayer recognizes a wagering loss if, at the end of a single session of play, the total dollar amount of wagers placed by the taxpayer on electronically tracked slot machine play exceeds the total dollar amount of payouts from electronically tracked slot machine play during that session.
- The taxpayer must use the same session of play if the taxpayer stops and then resumes electronically tracked slot machine play within a single gaming establishment during the same calendar day.
- If, after engaging in slot machine play at one gaming establishment, the taxpayer leaves that establishment and begins electronically tracked slot machine play at another gaming establishment, a separate session of play begins at the second establishment, even if played within the same calendar day as the first.
- If the taxpayer uses the above safe harbor definition of a session of play for any day in a calendar year at a particular gaming establishment, the taxpayer must use that same definition for all electronically tracked slot machine play during the taxable year at that same gaming establishment.



Shareholders Liable for Corporate Tax after Sale of Stock

Cross References

- *Stuart*, 144 T.C. No. 12, April 1, 2015

One of the main functions of a corporation is to shield a shareholder's personal assets from liability. Since a corporation is treated as an artificial person under state law, financial liability generally does not transfer from the corporation to the shareholder. A shareholder's risk of loss is generally limited to the amount invested in stock or money loaned to the corporation. However, certain transactions can result in a shareholder being personally liable for the debts of the corporation, such as in the case of fraud.

Four tax court cases were consolidated into one for purposes of trial, briefing, and opinion. The case centers on the sale of land on June 11, 2003, by a Nebraska C corporation in exchange for net cash proceeds of \$471,111. After the land sale, the corporation's only asset was the cash. The corporation's federal and state income tax liability on the gain from the sale was \$171,040. At the same time, an investment company issued letters stating it would purchase the corporation's stock from the shareholders and would pay them more for that stock than what they would receive by simply liquidating the corporation. The letters also claimed that the investment company after the stock purchase would cause the corporation to pay its tax liabilities. All of the shareholders agreed to sell their shares to the investment company. On August 6, 2003, the investment company transferred \$358,826 to a trust account set up on behalf of the shareholders, and the corporation transferred \$467,721 to a trust account set up on behalf of the investment company. The corporation was then left with no cash and no tangible assets.

When the corporation filed its federal tax return, it reported total tax due of \$148,456. It made no payment with the return. The following year, it showed a bad debt deduction of \$450,370 resulting from the worthlessness of a shareholder loan, and carried back a net operating loss to eliminate the previous year's unpaid tax liability. The IRS audited both years and disallowed the bad debt deduction and the NOL carryback. After failing to collect the tax owed from the corporation, the IRS attempted to collect the tax from the previous shareholders claiming they were transferees of the corporation's property. The shareholders took the case to the Tax Court.

The court had to determine whether the shareholders were liable as transferees of the property of the corporation for the unpaid 2003 corporate federal income tax. State law allows transferee liability when it is established that the transaction is fraudulent as to present and future creditors. The IRS argued that the court must disregard the form chosen by the shareholders to liquidate their investments in the corporation, and consider instead, the substance of the transaction. The IRS viewed that substance as follows: The Corporation's shareholders are each transferees of cash from the corporation because the stock sale was in substance a shareholder distribution of cash to them followed by payment of a fee or commission to the investment company. The stock sale should be disregarded, because in reality, it was nothing but a liquidation of the corporation and a distribution of its assets to its shareholders, with a commission paid to an investment company for the transaction.

The shareholders disagreed. They claimed that the corporation had money after the land sale. None of the proceeds from the land sale were ever transferred to them. And the corporation still had all the cash after they sold their stock to the investment company. Therefore they were not liable for how the corporation became insolvent after the stock sale so that it could not pay its tax liability.

The Tax Court looked at all the transactions that caused the corporation to become insolvent and concluded that the transfer to the investment account was fraudulent with respect to the IRS as a creditor under state law. As a result, the shareholders were individually liable as transferees under IRC section 6901 and the IRS could thus collect the corporation's tax liability from the shareholders.



Slain Officer Family Support Act of 2015

Cross References

- Public Law 114-7

On April 1, 2015, the President signed into law H.R. 1527 which allows a charitable tax deduction for cash contributions made for the relief of the families of slain New York Police Department Detectives Wenjian Liu and Rafael Ramos even if the contributions are made for the exclusive benefit of the detective's families. A taxpayer who makes such a contribution may claim a deduction in 2014 for contributions made between January 1, 2015, and April 15, 2015. The law also provides that the record-keeping requirements for the charitable tax deduction will be satisfied if the taxpayer produces a telephone bill showing the name of the organization to which a contribution was made with the date and amount of the contribution.

The law also confirms that payments made on or after December 20, 2014, and on or before October 15, 2015, to the spouse or any dependents of Detectives Wenjian Liu or Rafael Ramos by a tax-exempt organization will be treated as related to the purpose or function constituting the basis for such organization's tax exemption, and shall not be treated as inuring to the benefit of any private individual, if the payments are made in good faith using a reasonable and objective formula which is consistently applied.

