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SPECIAL REPORT

What to Do If Your Client Is a Victim of Tax-Related Identity Theft

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What to Do If Your Client Is a Victim of Tax-Related Identity Theft

Tax-related identity theft revolves around the fraudulent use of a social security number (SSN) or taxpayer identification number (TIN) for individuals, or an employer identification number (EIN) for businesses, as well as other required personal information to file a fraudulent return to obtain a refund. It can also involve use of someone else's SSN or other personal information without their permission for the purpose of obtaining employment.

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According to the FTC, for the sixth consecutive year, tax-related identity theft was the most commonly reported type of identity theft in 2015. The FTC received 221,854 complaints about this type of ID theft, accounting for almost half of the 490,220 total identity theft complaints.

Most states have slowed the state refund process as they work to combat this problem. The IRS is beefing up its efforts in the fight against identity theft despite continued threats and attacks on its outdated systems, a 400% increase in email tax scams in the 2016 filing season alone, and amid budget cuts that have caused a continued decline in its level of services.

Severity of the Problem

One of the best indications of the severity of the tax-related identity theft issue was found in the testimony of National Taxpayer Advocate Nina Olson before the House of Representatives Subcommittee on Government Operations on April 15, 2015:

"We have heard of organized criminals who have given up drug trafficking to engage in the much easier, safer and just-as-lucrative endeavor of tax refund fraud. The potential benefits seemingly far outweigh the potential risk, despite the . . . increased focus on prosecuting individuals charged with fraudulent tax refund schemes."

The National Taxpayer Advocate also noted that SSNs are "bought, borrowed and stolen like a commodity." For that reason, "anyone can, with minimal effort, obtain all of the information required to file a return purporting to be from another person."

Attacks and Threats on IRS Systems

Outdated IRS systems continue to allow taxpayers' personal information to be vulnerable to attacks and threats by identity thieves who use this information stolen from elsewhere to gain access to the IRS's systems.

On May 26, 2015, the IRS announced that thieves used personal identifying information (SSN, DOB and street address) stolen from outside sources to gain access to approximately 114,000 taxpayer accounts through the Get Transcript online application. As a result, the IRS shut down the Get Transcript application for real-time access. Later, in August 2015, the IRS updated its original estimate of affected taxpayers to include another 220,000 accounts. In a February 26, 2016, updated statement concerning the Get Transcript attack, the IRS indicated that an additional 390,000 taxpayer accounts were identified as potentially accessed by thieves, bringing the total number of taxpayer accounts affected to approximately 724,000. While thieves successfully accessed 724,000 taxpayer accounts related to this incident, it's important to note that attempts to access an additional 575,000 were unsuccessful, according to the IRS. That brings the number of taxpayer accounts targeted in this attack to almost 1.3 million.

To alert taxpayers impacted by this incident, the IRS mailed Letters 4281-A and 4281-B. Letter 4281-A was sent to the 724,000 taxpayers to inform them that a third party used data obtained from outside sources to successfully access their information on the Get Transcript system. The letter recommends that the taxpayer apply for an Identity Protection PIN (IP PIN) and offers free credit monitoring for a year. Letter 4281-B was sent to the other 575,000 taxpayers to inform them that an attempt was made but was not successful. The letter provides general information about identity theft and protecting data, but does not offer free credit monitoring.

While the Get Transcript application remains shut down for real-time access to transcripts, taxpayers can still use it to request transcripts. The difference is that the IRS sends the transcripts via mail to the last address it has for the taxpayer.

On February 9, 2016, the IRS indicated that it had identified and halted an automated attack on its Electronic Filing PIN application on IRS.gov. An e-file PIN (personal identification number) is required in some instances to electronically file a tax return. To e-file a 2015 tax return or other electronic forms, taxpayers must verify their identity with either the Self-Select PIN or adjusted gross income from their 2014 tax return. A taxpayer that does not have either of these can go online and request an Electronic Filing PIN. The PIN is provided in real time and the taxpayer gives this to his or her preparer so the return can be electronically filed. Identity thieves using stolen information from outside the IRS (possibly through a data breach or purchased) were able to successfully generate e-file PINs for 101,000 SSNs out of the approximately 464,000 SSNs attempted. The IRS is taking immediate steps to notify affected taxpayers by mail and further protect affected taxpayers by placing identity theft markers on their accounts. Electronic Filing PINs do not indicate identity theft. They are used to authenticate the taxpayer and are only for returns that are filed electronically. A tax return cannot be e-filed unless the prior year e-file PIN selected by the taxpayer or the adjusted gross income is included on the return. The IRS did not suspend this system. Taxpayers can still request an e-file PIN online.

The IRS indicated that it has temporarily suspended the Identity Protection PIN application to conduct a review of the current system in an effort to strengthen its security features.

Further, on March 7, 2016, the IRS indicated that it has temporarily suspended the Identity Protection PIN (IP PIN) application on IRS.gov to conduct a review of the current system in an effort to strengthen its security features. The IP PIN is a six-digit number that provides an additional layer of protection for taxpayers who have been or could become victims of tax-related identity theft. Taxpayers who receive an IP PIN must use it on electronic and paper returns in order for the returns to be accepted for processing. Prior to the 2016 filing season, the IRS mailed 2.7 million IP PIN letters (CP01A) to taxpayers. This online tool was the only option for some taxpayers to access or retrieve an IP PIN. These include taxpayers who lost or misplaced their IP PIN letter and need to retrieve the number; those who live in Florida, Georgia and District of Columbia and those invited by the IRS to apply for an IP PIN via Notice CP01F. According to the IRS, taxpayers who received an IP PIN and either lost or misplaced it or taxpayers who were invited to apply for an IP PIN should contact the Identity Protection Specialized Unit at 800.908.4490. Taxpayers able to verify their identity will be mailed the IP PIN unless they have moved since January 1, 2016, in which case they must file a paper return. Taxpayers who meet the criteria to retrieve an IP PIN using the online tool but did not retrieve it prior to the shut down of the system, must file a paper return and expect delays in processing.

Recognizing Tax-Related Identity Theft

Given the increasing severity of the tax-related identity theft problem, being able to recognize it is the first step in responding to, reporting and ultimately resolving the issue with the least frustration and delay possible. The following discussion explains how the IRS and the taxpayer can spot the warning signs of tax-related identity theft.

How the IRS Spots ID Theft — At Filing

One way the IRS combats identity theft is by trying to stop the fraudulent returns at the door. The IRS applies identity theft filters to all filed tax returns at processing to determine whether the return is fraudulent. These filters incorporate criteria based on characteristics of confirmed identity theft tax returns.

Tax returns identified by these pre-refund filters are held by the IRS during processing until the taxpayer's identity can be verified. The upside to this screening process is that the IRS was able to detect and stop approximately 4.8 million suspicious tax returns during the 2015 filing season. If the filters indicate potential identity theft, the IRS will halt the processing of the return, mark the account as ID theft initiated by the IRS and mail the taxpayer a letter (Letter 4464C, 5071C, 4883C or Notice CP01B). The letter alerts the taxpayer of the return filing, requests verification of his or her identity and the filing of the tax return or requests additional information.

The downside to the screening process is that many taxpayers' returns are incorrectly suspended — approximately one out of three returns suspended last year were legitimate. This can lead to frustration that is further amplified by the difficulty of reaching a live representative when calling the phone number as instructed in the letter or notice.

Identity theft filters are not able to detect certain characteristics on all filed returns at processing. Therefore, returns filed by the identity thieves sometimes fall through the cracks and are processed and the refund released.

Note: Checkpoint IRS Response Library has the tools and guidance you need — right at your fingertips — to assist your clients in responding to letters received related to identity theft. If your client receives an IRS notice or letter, the number can be entered into the "Find by Citation" template to obtain a detailed explanation and sample of the notice or letter plus a link to Chapter 12, Identity Theft.

The IRS also detects identity theft on tax returns after they've been processed.

How the IRS Spots ID Theft — Post Filing

The IRS also detects identity theft on tax returns after they've been processed. When an IRS examiner screens filed individual tax returns for fraud potential and identifies a questionable Form W-2 associated with a tax return, the examiner performs extensive research to locate the employer. If the employer listed on the W-2 is determined to be a fictitious business, the EIN is designated as suspicious. To detect identity theft, the IRS uses a compilation of these EINs (called the Suspicious EIN Listing) to identify individual tax returns that have income reported using those EINs. If a W-2 on a tax return is identified as using a suspicious EIN to report income, the IRS sends an informational letter (Letter 4491C) to alert the real taxpayer that his SSN was used by another person to obtain employment. To detect business ID theft, this listing is compared to filed business tax returns to determine those filed using suspicious EINs. According to a September 9, 2015 TIGTA report, an analysis of business returns filed in 2014 identified 233 business tax returns filed using a known suspicious EIN. Of these returns, 97 or 42% claimed refunds totaling over $2.5 million.

How Your Client Can Spot ID Theft

Tax-related identity theft can occur for individuals as well as businesses. Knowing the warning signs and educating your client will help determine next steps.

The following are identity theft warning signs for individuals:

- The client's SSN has been compromised (data breach, lost or stolen wallet or purse), putting them at risk.
- The return is rejected, with the reject code indicating the taxpayer's SSN already has been used.
- The client receives IRS notices regarding a tax return after all tax issues have been resolved, refund paid or account balances have been paid.
- The client receives an IRS notice indicating that wages were received from an employer unknown to them.

The following are identity theft warning signs for businesses:

- The client's return is accepted as an amended return, but the taxpayer has not filed a return for that year.
- The client receives IRS notices about fictitious employees.
- The client receives notices regarding a defunct, closed or dormant business after all account balances have been paid.

It's important to note that the most common victims of tax-related identity theft are children, the elderly, deceased individuals and people who are in prison. Why? Because these individuals may not have a filing obligation or file a tax return, the thief's tax return is the first one filed with the IRS — and there is no duplicate return or SSN to kick out the fraudulent return.

Responding to Tax-Related Identity Theft

According to a February 17, 2016, TIGTA audit report, the IRS mailed more than 188 million notices and letters to taxpayers during calendar year 2014. It's a good bet that many of your clients do not know what the notice means or why it may be significant.

What to Do When the IRS Suspects ID Theft

If your client receives a letter (Letter 4464C, 5071C, 4883C or Notice CP01B) from the IRS alerting him of a return filed on his behalf and requesting his identity to be verified, he will be required to do so through the Identity Verification Service (IDVerify) website or by calling the IRS at the Taxpayer Protection Program (TPP) line at 800.830.5084. The TPP line is designed to assist taxpayers whose returns have been suspended by the IRS because filters applied to the return at processing indicate potential identity theft; however, due to the significant decline in the level of service on this line (81% in 2014 and 17% in 2015, according to the National Taxpayer Advocate Objectives Report for 2016), taxpayers are encouraged to go through the IDVerify website. According to the IRS, this website is the fastest way to verify identity unless the taxpayer is unable to access the website or did not file the return in question.

Your client has 30 days to respond to the letter or notice from the IRS. The IDVerify website will ask a series of "out of the wallet" questions that only the real taxpayer is likely to know. Your client should have his prior year tax return and current year tax return available, if filed, as well as supporting documents, such as Forms W-2, 1099 and Schedules A and C. Once identity is verified, your client can confirm whether or not he filed the return in question.

If your client did not file the return, the IRS will treat the case like an identity theft case and follow the normal procedures to assist. If your client confirms he did file the return, it will be processed and the refund issued in approximately six weeks.

If your client receives Letter 4491C from the IRS informing him that someone used his SSN to obtain employment, he will need to report the problem to the Social Security Administration where his earnings will be reviewed to ensure his records are correct. The IRS will handle adjusting the account so that tax is not assessed against the fraudulent income reported. However, your client will still need to contact the Identity Protection Specialized Unit (IPSU) at 800.908.4490 to actually report the identity theft to the IRS since the Letter 4491C does not confirm ID theft has actually occurred.

Alert: The IRS never assumes that actual tax-related identity theft has or has not occurred on a taxpayer's account; it only suspects identity theft based on set criteria and notifies the taxpayer of that suspicion. It's up to the taxpayer to either confirm or deny the IRS's suspicion of identity theft before any further action is taken on the account. Failure to respond in a timely manner and as required will cause the IRS to close a tax-related identity theft case as "NO REPLY." The IRS will process the return as if it were legitimate, which means that the thief will get the refund and continue to file fraudulent tax returns on behalf of the taxpayer.

What to Do When Your Client Suspects ID Theft

Since practitioners can play a valuable role in assisting their clients in resolving the issue, they must understand what to do on their behalf. In general, your client should take immediate steps to report identity theft to the IRS and each state department of revenue (if applicable) as soon as he becomes aware or even suspects he is a victim. Reporting the incident alerts the IRS and state(s), so the tax account is automatically marked for identity theft monitoring for any future activity.

Reporting ID Theft to the IRS: If your client receives an IRS notice and identity theft is suspected, advise him to immediately contact the phone number on the notice. It is important to contact the number specifically provided in the notice as this will ensure he receive assistance from someone knowledgeable about their issue.

If your client suspects he is victim of tax-related identity theft but has not received a notice from the IRS, direct him to contact the Identity Protection Specialized Unit (IPSU) at 800.908.4490. The IPSU provides services for victims of tax-related identity theft, normally after the theft has taken place. It is important to remember that the IPSU only monitors identity theft victims' accounts; it does not resolve identity theft cases.

If your client is an individual taxpayer who is unable to reach the IPSU by phone due to disconnects or long hold times, assist him in preparing and submitting Form 14039 (Identity Theft Affidavit) along with supporting documentation and mail or fax it according to the instructions on Form 14039. Form 14039 is to be completed only for individual taxpayers who have been impacted by identity theft. Business taxpayers who are victims of ID theft will have to contact the IPSU to report the theft. Once the theft is reported, if required, the IRS will mail the business a Form 14039-B (Business Identity Theft Affidavit) to complete and return with supporting documentation.

Alert: Form 14039-B is not available to the public and cannot be downloaded from the IRS website. The form is only mailed to a business taxpayer by the IRS, if required.

If you attempted to file your client's tax return electronically and it was rejected because a return had already been filed using his name and tax identification number (SSN, ITIN or EIN), file a paper tax return with Form 14039 attached for individual clients. For a business client whose tax return was rejected due to identity theft, file a paper return with a statement or police report attached that indicates identity theft. If you are a tax return preparer who reasonably expects to file 11 or more individual income returns in a calendar year, then all returns prepared for individuals, estates and trusts must be filed electronically unless an exception is met. For this reason, Form 8948 (Preparer Explanation for Not Filing Electronically) must also be attached to the paper tax return filed on behalf of the client.

Note: The IRS will accept either a police report or Form 14039 to report identity theft and mark the client's tax account for identity theft monitoring.

Reporting ID Theft to State(s): Immediately contact the state according to the ID theft procedures specific to the particular state if your client encounters any of the following situations:

- Tax-related identity theft is suspected but a notice or letter has not been received from the state.
- The state tax return cannot be electronically filed because the federal return was rejected due to ID theft.
- The state tax return itself was rejected due to ID theft.

Note: Chapter 8 of PPC's Guide to Tax Related Identity Theft has state-specific identity theft information for each state and the District of Columbia. Coverage includes general contact information for identity theft issues and step-by-step guidance for responding to state tax-related identity theft, as well as the specific state tax-related identity theft form, if applicable.

Resolving Tax-Related Identity Theft

According to the IRS, it takes approximately 180 days to resolve an identity theft case from the time it is reported. However, a March 2015 TIGTA audit report indicated it takes the IRS on average 278 days to resolve an identity theft case.

According to the IRS, it takes approximately 180 days to resolve an identity theft case from the time it is reported.

Keeping on top of the situation at all times is vital to getting your client's case resolved in a minimal amount of time with less frustration and confusion, so it's helpful to understand what happens to your client's case once identity theft is reported.

When the IRS suspects identity theft and sends your client a letter requesting him to verify his identity, assist your client in following the instructions outlined in the letter. In some instances, your client may be unable to verify his identity through the website or customer service representative via phone. When this happens, the IRS will instruct your client to visit a local Taxpayer Assistance Center in person to verify his identity and whether or not he filed the tax return in question. Your client should be prepared to present a clear and legible copy of his driver's license, social security card, passport or valid U.S. Federal or State government issued identification, a copy of the letter or notice received and a copy of the tax return if the return in question was in fact filed. Once your client verifies his identity, the case is resolved and any applicable refund is released in six to eight weeks according to IRS.

If your client suspects ID theft and has reported the incident to the IRS by submitting Form 14039 (or a police report) along with supporting documentation, the case is assigned to the Identity Theft Victim Assistance (IDTVA) unit where it will be handled by employees with specialized training. The processing of the case by the IDTVA involves the following:

- Sending an acknowledgment letter to the taxpayer for receipt of Form 14039 (or police report) and supporting documentation (if the documentation meets requirements) — otherwise, a letter is sent requesting supporting documentation that meets requirements
- Determining if identity theft affects one or more tax years
- Determining if there are additional victims listed on the fraudulent tax return that may be unknown to the taxpayer
- Researching the case to determine whether all names, addresses and SSNs are accurate or fraudulent
- Analyzing the case to determine if all outstanding issues have been addressed
- Ensuring proper processing of the tax return and, if a refund is due, releasing the refund
- Removing the fraudulent tax return from the tax records
- Sending a final letter to the taxpayer indicating the case has been resolved and the refund, if applicable, has been released

Note: Once the identity theft case is resolved, the refund will be issued separate from the final letter to the taxpayer.

Delays in Resolving Identity Theft

Several issues contribute to delays in resolving tax-related identity theft. Some are caused by the taxpayer; others are not.

Once identity theft has been suspected or alleged by the IRS or the taxpayer, it is the IRS's responsibility to take the appropriate steps to confirm whether identity theft has occurred before making any corrections to the taxpayer's account. These steps involve extensive research based on the supporting documentation provided by the taxpayer. When that documentation is not clear or complete, the IRS is required to delay the processing of the case and contact the taxpayer via letter to request the proper documentation.

During a presentation at the 2015 IRS Nationwide Tax Forum, a representative from the IDTVA unit indicated the number one reason for delays in resolving identity theft cases is the lack of a legible and clear copy of photo identification submitted with Form 14039.

The examples below illustrate the difference between acceptable supporting documentation and the type of unacceptable documentation that can lead to delays in your client's identity theft case.

1

2

3

Copy 1 is an acceptable scanned copy of photo ID on which all information is clear and legible. Copy 2 is an unacceptable ID card made on a copier. While the photo itself is clear, the written information is not legible, so the IRS will delay processing of the case until the taxpayer is contacted and a legible copy is received. Copy 3 is an obviously poor photo ID. This copy shows how the document could appear when received as a fax to the IRS. It's easy to see how the poor quality of this supporting documentation could lead to delays in resolving identity theft cases. While the IRS does allow information to be faxed, the best way to ensure legible and clear documentation is received by IRS is to make acceptable copies and send the information via certified mail with return receipt delivery.

Other delays are not caused by the taxpayer. There are times when all the required supporting documentation has been received by the IRS and you have done everything required on behalf of your client and the case is still not resolved. Sometimes your client is being shifted back and forth to different departments in the IRS. Or perhaps the IRS is not responding in the required time frames. In an audit report dated February 17, 2016, the Treasury Inspector General of Tax Administration (TIGTA) reported that over-aged IRS correspondence has steadily increased from 40% in 2012 to 49% in 2015, causing unnecessary burdens to taxpayers. The report also indicates there were 667,242 pieces of correspondence outstanding as of September 30, 2015. Of this amount, 80,088 or 12% is related to identity theft correspondence received from taxpayers.

When these problems above are added to the shortage of trained employees who actually work directly on identity theft cases, it's easy to understand that the wait times and processing issues are likely to continue to cause delays in resolving identity theft cases and issuing taxpayers' refunds, where applicable.

When to Contact the Taxpayer Advocate Service

If your client has reported identity theft to the IRS through proper channels, the IRS is not responding in the appropriate time frames or is experiencing hardship due to the delayed refund or the identity theft issue you should direct him to contact the National Taxpayer Advocate (NTA) office at 877.777.4778. In extreme cases, a visit to the local Taxpayer Advocate Office will be warranted.

According to the National Taxpayer Advocate Objectives Report for 2016, the NTA averaged 66 days to resolve identity theft cases and issue refunds to taxpayers in 2015, as opposed to the 278 days it takes to resolve an ID theft case through normal IRS channels.

IRS internal guidelines state that correspondence is considered over-aged if not resolved within 45 days.

IRS internal guidelines state that correspondence is considered over-aged if not resolved within 45 days. When a response to a taxpayer is necessary, a "quality response" is required within 30 calendar days of the receipt of the taxpayer's correspondence. The IRS defines a quality response as one that is timely; is accurate; addresses all of the taxpayer's issues; requests additional information, if needed and is written in plain language that the taxpayer can understand. If the 30-day time frame can't be met, an interim response must be sent.

One of the Taxpayer Advocate Service (TAS) acceptance categories is "systemic burden." Systemic burden cases are those in which an IRS process, system or procedure has failed to operate as intended, and as a result the IRS has failed to timely respond to or resolve the taxpayer issue. To be considered a systemic burden, the following criteria must be met:

- The taxpayer has experienced a delay of more than 30 days to resolve a tax account problem.
- The taxpayer has not received a response or resolution to the problem or inquiry by the date promised.
- A system or procedure has either failed to operate as intended or failed to resolve the taxpayer's problem or dispute with the IRS.

Documenting and tracking all contact to and from the IRS is important should you need to make a case for "systemic burden" to get TAS involved. With the short turnaround in TAS and the average wait time on the NTA phone line at 18.8 minutes, it's worth a shot to take this route to get your client's case resolved quicker.

Requesting a Copy of the Fraudulent Return

New this year is the ability of a victim of identity theft (or a person authorized to obtain the identity theft victim's tax information) to request a redacted copy of the fraudulent return that was filed. With this information, victims can determine the impact of the information reported by the thief on the bad return. The IRS will not release a copy of the bad return until after the identity theft case has been resolved and final letter is issued.

Due to federal privacy laws, the victim's name and SSN must be listed as either the primary or secondary taxpayer on the fraudulent return; otherwise, the IRS cannot disclose the return information. For this same reason, the IRS cannot disclose return information to any person listed only as a dependent.

Note: Chapter 2 of PPC's Guide to Tax-Related Identity Theft provides guidance and sample letters for either the taxpayer or representative to request a copy of the fraudulent return.

Conclusion

Because there is no doubt that tax-related identity theft will continue for the foreseeable future, as your clients' trusted advisor, knowing how to advise and navigate them through the resolution process is a great way to demonstrate value.

In summary, follow these basic steps if your client is a victim of tax-related identity theft:

1. Discuss and confirm the identity theft incident(s) with the client.
2. Consider obtaining a written client agreement for the identity theft engagement.
3. Obtain or confirm that you have proper authorization to represent the client.
4. Assist the client in filing identity theft complaints with the FTC, credit agencies and local law enforcement.
5. Obtain the client's account information from IRS or state(s) department of revenue.
6. Report the identity theft to the IRS and state(s) department of revenue.
7. Respond to any IRS or state notices sent to your client.
8. If the federal and/or state tax returns were rejected, file a paper return with the appropriate documentation attached (Form 14039 or state-specific form).
9. Keep on top of the situation by documenting and tracking all correspondence to and from the IRS or state(s) department of revenue.
10. Contact the Taxpayer Advocate Service if your client has or is about to experience a hardship as a result of the identity theft or meets the systemic burden criteria.

Related Resources

PPC's Guide to Tax Related Identity Theft on Checkpoint is your one-stop resource for issues pertaining to tax-related identity theft. This Guide is designed so that practitioners can assist their clients either by providing information to handle the issue themselves or by handling the issue for them.

It is the single all-in-one resource on how to recognize, report and resolve individual and business tax-related identity theft issues, and it includes IRS and state-specific information for all 50 states and the District of Columbia. Detailed guidance is illustrated by real-life examples, practice aids and step-by-step checklists for responding to and resolving tax-identity theft issues.

Checkpoint IRS Response Library has the tools and guidance you need — right at your fingertips — to assist clients with identity theft issues. If your client receives an IRS notice or letter, the number can be entered into the "Find by Citation" template to obtain an explanation and sample of the notice or letter plus a link to Chapter 12, Identity Theft.

If your client has not been contacted by the IRS but believes that he or she is a victim of identity theft, you can go directly to Chapter 12 via key word search or the table of contents. As with the other chapters in the IRS Response Library, Chapter 12 provides FAQs, relevant authorities for information provided, a brief overview of the topic, practice overview estimating the billable hours for an identity theft engagement, a step-by-step workplan for handling the matter with a sample engagement agreement, response documents, practical tips, examples and sample phone scripts.

For more information, visit tax.tr.com or find your local representative at tax.tr.com/rep-locator

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