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# LEGAL ADVISOR



*OFFICE OF THE STATE ATTORNEY TENTH JUDICIAL CIRCUIT*

**June 2014**

**INSIDE**

*Identity Theft  
and Tax Return  
Fraud*

From the Courts



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# Identity Theft and Tax Return Fraud

Economic/Crime Division: John Kessenich

Identity theft and tax return fraud are serious crimes that are becoming more prevalent in America today. According to a Government report issued in November of 2013, the Internal Revenue Service (IRS) issued a total of \$4 billion dollars in fraudulent tax refunds. Florida is a hotbed for this activity. Miami alone has the distinction of being the city with the most fraudulent claims. <http://www.usatoday.com/story/money/business/2014/04/10/bogus-tax-refunds-problem/7557897/> In addition to having broad consequences there are also negative effects to individuals victimized by these schemes.

It is the duty of law enforcement as well as prosecutors to increase awareness and enforcement of this growing threat. The reason that this article encompasses both identity theft and tax return fraud is they are closely intertwined in a common scheme. Criminals who perpetrate this scheme must take a number of steps:

**Acquire stolen identities:** Criminals will acquire stolen identities from a number of different sources. Schools, jails/prisons, nursing homes, and hospitals are just some of the common examples. Identities of people that will not normally be filing tax returns are ideal. The criminal filing the tax returns is not always the same one stealing the identities, and will pay others to acquire identities.

**File fraudulent returns:** Federal tax income forms will be filed using these fraudulent identities. Tax programs available for free online are often used to assist in this process. The information used in the return is usually not accurate and is geared to maximize the return.

**Convert the return to useable assets:** A tax return can be acquired in three distinct ways: Direct deposit into a bank account, tax return check mailed to an address, and a tax return deposited onto a pre-paid debit card that is mailed to an address. The person who carries out these transactions, either by opening the account, cashing the check, or using the pre-paid debit card, is not always the same one who filed the return or acquired the identities. Criminals involved in this scheme will pay others to interact with financial

institutions on their behalf to avoid detection.

The scheme can be more complex than these steps and use more measures to conceal the criminal activity, but any tax refund scheme will require some version of the above. With these steps in mind it is easier to detect, investigate, and prosecute these crimes. When interacting with individuals in any capacity, whether it be a consensual encounter or search, a search incident to arrest, or a search warrant, there are indicators to look for that will signal that

someone may be involved in this scheme. Items to look for include, but are not limited to:

- Multiple credit/debit cards with different names on them;
- Multiple tax refund checks with different names on them;
- An unusual amount of tax documents from an online tax services;
- Bills or other mail for a person other than the suspect; and
- A notebook or ledger with names, social security numbers, and addresses.

Once someone is identified as a potential suspect there are a number of steps that should be taken in order to properly investigate and document the scheme. Any identity documents, credit cards, or

checks found on the suspect should be lawfully seized as quickly as possible. A search warrant should be sought to search the suspect's house and vehicle if these areas have not already been searched. Make sure to include cell phones and laptops in any search warrant. The best piece of evidence that can be found is the aforementioned notebook or ledger that lists names, social security numbers, and addresses. This document is how those who conduct this scheme keep track of the returns they have filed and identities they have used. The ledger often includes email addresses and passwords used for the online tax return service.

Once the possible victims have been identified, they should be searched by social security number and located. Often victims are not local and have no idea their identity has been used. An identity theft affidavit should be sent to these individuals. This document should ask for the following



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information: victim's name, social security number, address, contact number, and contact email. In addition to this biographical information it should also include a statement that they do not know the suspect who is using their identity nor have they given the person permission to do so. This document should be notarized before it is returned. If the victim is deceased, a certified copy of their death certificate should be obtained in lieu of an identity theft affidavit.

Attempts should be made to identify which method the suspect is using to convert the tax returns into usable money. It is important to remember that when subpoenaing any business record a business record certification should be included. A business records certification is a document that allows a prosecutor to enter the business records into evidence during a trial without having to call a records custodian as a witness. This is helpful because companies that are headquartered outside of the State of Florida can be uncooperative in sending a records custodian to testify. If the documents can't be entered into evidence, there is no point in having the records.

If the suspect is having the checks deposited directly into a bank account, the bank records for this account should be subpoenaed. Any video for transactions involving the account should be obtained if still available. The signature card for the account will also be an important piece of evidence. If the suspect is having tax return checks mailed to them, then they have been cashing these checks or depositing them into a bank account. Most banks will not handle these checks without proper identification. In order to use these checks, the suspect either has been forging identification cards, a power of attorney form, or has a co-conspirator working at a financial institution. If it can be identified where these transactions are occurring, any documentation of such should be subpoenaed. If the suspect is in possession of numerous debit/credit cards, then the suspect is having the returns deposited directly onto them. Some companies that are frequently used in these schemes are Green Dot and NetSpend. Subpoenas should be sent to these companies for any records relating to cards that are found. These records will often show what phone number, email address, and physical address are associated with the card; this information can be used to match the suspect. A certified copy of the suspect's DAVID information can be used to show the addresses used and is helpful

documentation. This is not a complete list of documentation that can be acquired to prove these cases, but is a good starting point. Contacting the State Attorney's Office early while investigating these cases will give you the best idea of documentation is needed.

Florida has a number of statutes that cover this type of scheme. A scheme to defraud can be charged if the Internal Revenue Service (IRS) is listed as the victim. This can be difficult for prosecutors to prove though, as it requires some level of cooperation from the IRS, which does not always have the resources to devote time to state level investigations. The more effective statutes to charge at the state level involve the identity theft aspect of the scheme.

If you have evidence that the suspect is actually using the identities possessed, for example, tax return checks or pre-paid debit cards in the name of the victim, then you can charge Criminal Use of Personal Identification Information, Florida Statute 817.568. At the most basic level, one count of this charge can be

used for each victim's name that is used in the scheme. Each count is a third degree felony. The following are different variations of the statute that can also be charged and the corresponding consequences.

=If the suspect obtains more than \$5,000 with the victim's identity – Second Degree Felony; Three year minimum mandatory sentence.

=If the subject uses more than 10 victim's identities – Second Degree Felony; Three year minimum mandatory sentence.

=If the suspect obtains more than \$50,000 with the victim's identity – First Degree Felony; Five year minimum mandatory sentence.

=If the suspect uses more than 20 victim's identities – First Degree Felony; Five year minimum mandatory sentence.

=If the suspect obtains more than \$100,000 with the victim's identity – First Degree Felony; Ten year minimum mandatory



sentence.

=If the suspect uses more than 30 victim's identities – First Degree Felony, Ten year minimum mandatory sentence.

=If the victim is less than 18 years old – Second Degree Felony.

=If the victim is deceased – Third Degree Felony.

If you find a suspect that is in possession of numerous identities, but there is no evidence of them actually using the identities to commit the scheme, a recently enacted statute covers this activity. Florida Statute 817.5685 is Unlawful Possession of the Personal Identification Information of Another Person. If the suspect is in possession of four or less identities, the charge is a first degree misdemeanor. If the suspect is in possession of five or more identities, the charge is a third degree felony. The penalties under statute 817.5685 are not as significant as those under 817.568.

Identity theft and tax return fraud are important crimes that are happening at an increasing rate in Florida. One of the terms used to reference this is a "money drop" scheme. In order to effectively counter this growing criminal activity, it is important to understand the customs and signs to look for. With the ability to effectively recognize, investigate, and charge suspects involved in this scheme, it will close this avenue for criminals to profit at the expense of victims.



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The "Legal Advisor" is published by:  
Office of the State Attorney, 10th Circuit  
P.O. Box 9000 Drawer SA  
Bartow, FL, 33831

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## FROM THE COURTS...

### **SEARCH AND SEIZURE – INVESTIGATORY STOP—PAT DOWN**

The defendant was charged with carrying a concealed firearm and possession of cannabis after officers conducted an investigatory stop and subsequent pat down. The officers initially came into contact with the defendant when they determined, based on their training and experience, that he was "casing" a house in preparation for a burglary. When their marked patrol car turned around, the defendant immediately began to walk away from the area. Further, the officers observed the defendant holding his wasteband and manipulating something in his wasteband, as if he was attempting to conceal a weapon. The officers approached, detained and questioned the defendant. The defendant consented to a pat down which revealed the firearm and cannabis. The trial court granted the defendant's motion to suppress, holding that there was insufficient evidence to support the officers detaining the defendant. On appeal, the Third District reversed the trial court's suppression of the evidence, holding that the totality of the circumstances provided the officers with sufficient cause to believe that a crime was being committed. The defendant's gesture to his wasteband sufficiently supported the officers' belief that the defendant might be concealing a weapon and that a pat down was warranted. *State v. Cruse*, 38 FLW D1921b (Fla. 3rd DCA September 11, 2013).

