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LSC

Federal Trade Commission
Office of the Secretary
Rom H-113 (Annex L)
600 Pennsylvania Avenue, NW
Washington, DC 20580

SENIOR IDENTITY THEFT, P065411

Dear Federal Trade Commission:

Thank you for this opportunity to respond to your request for information concerning identity theft and senior citizens. My comments focus on the federal income tax consequences of identity theft. A case opens my comments.

Ms. A's daughter found her mother in a feces-smeared home. Her mother was malnourished, unkempt and ill. The IRS was levying on her Social Security benefits. The levy had been in place for several years, because the IRS associated self-employment income reported on a form 1099-Misc with Ms. A's social security number. At age 75 and with advanced dementia, such employment was highly unlikely. The IRS was ignorant to that fact. When Ms. A found her mother, she faced the financial chaos that had overtaken her mother: Forms, papers, letters, and statements – were strewn about the house. Unraveling the tax problem showed that someone (Ms. A's daughter suspects it was one of Ms. A's grandchildren) had used Ms. A's social security number to receive earnings. The individual who used Ms. A's social security number did not file tax returns or pay the tax associated with that income. Eventually, the IRS assessed the tax and began collection against Ms. A, the owner of the social security number. Ms. A obtained the release of the levy, filed tax returns, and secured the return of the levied benefits that were not time-barred. Ms. A died while her appeal of the time-barred refund was pending, and her daughter elected not to continue with the claim.

Ms. A's case illustrates the problems the elderly face with the tax side of identity theft, yet her case is not an isolated one. Our elderly caseload also includes former nursing home and group home residents whose social security numbers have been used by others to work and to file tax returns for the purpose of seeking tax refunds to which the social security number owner would not be entitled. This is consistent with stories across the country. For example, Polk County Florida Police arrested 19 nursing home staff members and charged them with appropriating and selling nursing home residents' personal information for the purpose of filing tax returns. *See* (Bay 9 news: May 08 2012 - http://bn9.tpa.bhn.net/content/news/baynews9/news/article.html/content/news/articles/bn9/2012/5/8/_19_arrested_in_tax_.html). The deceased are also victims of the identity theft; their social security numbers have been readily available through the Death Master File. In 2011 alone, IRS has received 660,000 decedent returns. *See* National Taxpayer Advocate Report to Congress. Fiscal Year 2012 Objectives. June 2012 at 17.

The results of these thefts are twofold: First, the IRS may levy or lien on social security benefits, pensions, bank accounts, or other assets in order to secure payments. *See* 26 USC §§ 6321, 6331. Second, seniors receiving need-based benefits such as medicaid, food stamps, subsidized housing, passport, and other such assistance may suffer reductions, termination and overpayments. *See e.g.* Ohio Admin. Code 5101:1-39-08. Individuals' employment income reported to the IRS (by way of payor statements such as forms W-2 and 1099 (whether real or fabricated), artificial undocumented self-employment income, or by tax returns) may be matched with payor agencies' data and imputed to the beneficiary. The genesis of an SSI overpayment might well be a tax return filed by a third party without the knowledge or consent of the SSI recipient. Nevertheless, SSA will presume the tax return's income belongs to the social security number shown on the return and begin its overpayment recoupment process.

Identity theft tops the FTC's problem list. *See* Consumer Sentinel Network Data February 2012 at 12. It also tops the IRS's problem list. *See* http://www.irs.gov/newsroom/article/0,,id=254501,00.html. In 2009, the Treasury Inspector General for Tax Administration reported that 245,079 taxpayers reported 456,453 identity theft incidents. *See* Treasury Inspector General for Tax Administration – Most Taxpayers Whose Identities Have Been Stolen to Commit Refund Fraud Do Not Receive Quality Customer Service, May 2012 at 3. Two years later, that number was 641,052 taxpayers reporting 1,125,634 incidents. *Id.* The IRS confirmed that 553,730 taxpayers were identity theft victims. *Id.* Using income tax reporting, whether for false income documents (W-2, 1099) or returns, is facilitated by the ease by which tax returns can be filed electronically, allowing unauthorized individuals to continue to file returns with seeming impunity. Merely knowing the last year's adjusted gross income (even if it is $0, as would be the case with a low-income Social Security recipient), name and social security number would enable anyone to file a tax return electronically. *See* Identity Theft and Tax Fraud: Growing Problems for the Internal Revenue Service: Hearing Before the Subcommittee on Government Organization Efficiency and Financial Management – 112th Congress, First Session. – Steven T Miller Statement, November 4, 2011. The taxpayer does not suffer the consequences of fictitious income and return documents until months, if not years, after her social security number was misused. The IRS's automated underreporter and substitute for return processes, by which the IRS computer matches returns and income documents and corresponds with taxpayers, may not begin until one year or more after the return was filed. That correspondence would be sent to the taxpayer's last known address, as shown on a tax return, yet this may not be the taxpayer's real address. (For example, an unauthorized filer input the address of a vacant lot as the taxpayer's address in one of our recent cases.) *See* Treasury Inspector General for Tax Administration – Most Taxpayers Whose Identities Have Been Stolen to Commit Refund Fraud Do Not Receive Quality Customer Service, May 2012 at 11. Consequently, an individual may have no idea that her social security number was compromised until the tax is assessed and the IRS begins enforced collection, or until the individual's need-based benefits are threatened. Identifying that one is a victim of tax-related identity theft is just the tip of the iceberg. Unraveling and resolving tax-related identity theft cases at the IRS can take up to 917 days. *Id* at 8. Often, the taxpayer has to deal with multiple IRS functions across the country thus exacerbating the emotional and financial toll of identity theft.

The purpose of these comments was to introduce the federal income tax dimension to your discussion of identity theft and seniors. Thank you for this opportunity.

Sincerely,

Susan Morgenstern
Senior Attorney