

Grassley Letter Raises Scam Enforcement Questions

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Senate Finance Committee member Chuck Grassley, R-Iowa, has asked the Justice Department about enforcement efforts against scam artists calling people claiming to be collecting a tax debt for the IRS, leading to questions about the proper use of tax enforcement resources.

Grassley's March 22 letter to Deputy Attorney General Sally Quillian Yates asks why there have not been more publicized prosecutions of individuals involved in IRS impersonation scams. In these scams, a taxpayer receives a telephone call from someone purporting to be from the IRS and seeking to collect on a tax debt.

'If someone calls unexpectedly claiming to be from the IRS with aggressive threats if you do not pay immediately, it is a scam artist,' Camus said.

The impersonation scam can include live phone calls in which the scammer threatens imminent or immediate arrest if the victim does not pay the debt quickly. In August 2015 the IRS warned of robocall impersonation scammers. These scammers place recorded message calls including callback numbers and urgent requests that threaten legal action. They often demand payment on prepaid debit cards.

In March 2015 testimony before the Senate Finance Committee, Timothy P. Camus, Treasury Inspector General for Tax Administration deputy inspector general for investigations, described the existing impersonation scam problem and mentioned the increasing use of robocalls. He said the scam is easy for victims to spot and avoid: "If someone calls unexpectedly claiming to be from the IRS with aggressive threats if you do not pay immediately, it is a scam artist." The IRS will not call about taxes owed or initiate contact through email or text messages without first sending a notice in the mail; it will not demand a specific payment method like prepaid debit cards it will not ask for credit or debit card numbers over the phone; and it will not threaten the use of local police for nonpayment, he said. (Prior coverage: *Tax Notes*, Mar. 16, 2015, p. 1352.)

On March 25, 2016, TIGTA issued a release describing its efforts to fight impersonation scammers, including coordination with the telephone

companies, publishing known scammer phone numbers, and publicity outreach efforts. Perhaps the most ironic effort against the phone scammers mentioned in the release is the use of "an autodialer to call the scammers to advise them that their activity is criminal and to cease and desist."

In the release, Inspector General J. Russell George states that because of TIGTA's actions, targets are now approximately one-tenth as likely to be victimized as they were just a few months before. He reiterated that an unexpected call claiming to be from the IRS and threatening legal action if the target does not pay immediately "is a sign that it is not the IRS calling and your cue to hang up."

Grassley's letter asks for information on investigations and prosecutions connected to impersonation scams since 2013; the Justice Department's prioritization of impersonation scam investigations; the coordination efforts between the Justice Department and the IRS Criminal Investigation division; what "information, tools, and legal authority" would help the Justice Department address the impersonation scams; whether the Justice Department has a comprehensive plan to address the scams; and what tactics, strategies, and resources the Justice Department is using against the scams. Grassley requested a response by April 11.

A Justice Department spokesperson told Tax Analysts that the Justice Department takes the issue seriously and will respond to Grassley's letter. "The Justice Department is committed to working with our federal law enforcement partners in investigating these crimes and identifying and prosecuting the individuals involved," the spokesperson said.

Recent Action

On March 22, the same day Grassley sent his letter, the Justice Department announced the guilty plea of a Maryland man for laundering money that included the proceeds of IRS impersonation scams. According to the announcement, the investigation involved the office of the U.S. attorney for the District of Maryland, CI, and the Baltimore County Police Department.

On July 8, 2015, the Justice Department announced a sentence of 14 years and seven months for a Pennsylvania man leading an impersonation scheme ring conducted primarily through call centers in India and involving impersonation of not only the IRS but also the FBI. The announcement said the investigation involved the office of the U.S. attorney for the Southern District of New York, TIGTA, and the FBI.

Who Should Handle the Cases?

Grassley's letter states that he believes that the IRS impersonation scams are within the purview of CI and the Justice Department Tax Division. He

copied the letter to Caroline Ciraolo, acting assistant attorney general in the Tax Division.

However, Mark E. Matthews of Caplin & Drysdale Chtd., a former CI chief, said the cases are primarily handled by TIGTA and the Justice Department Criminal Division. "It makes sense because these are not tax cases, there are no tax issues. . . . [T]hese are pure fraud schemes," he said. The need for uniformity in resolving tax issues — the reason to use the Tax Division rather than local U.S. attorneys — is not at stake, he said.

While there may be some reason to use tax enforcement resources of CI and the Tax Division to prosecute stolen identity refund fraud because the fraud proceeds come from the tax system, that justification does not hold for impersonation scams targeting victims directly, Matthews said. Matthews is just one former CI chief who has questioned the use of CI resources even for identity theft. (Prior coverage: *Tax Notes*, Nov. 3, 2014, p. 494.)

Referring to his recent *Tax Notes* article, Matthews repeated his call for more funding for CI as an alternative to relieving CI of the responsibility for both impersonation scams and identity theft, which he regards as pure fraud schemes.

Nathan J. Hochman of Morgan, Lewis & Bockius LLP (former assistant attorney general for the Justice Department Tax Division), said the connection of IRS impersonation scams to the tax system by invoking the IRS as the boogeyman may justify use of IRS enforcement resources. "To the extent that something affects the integrity of the tax system — and clearly if people think that the IRS is ripping them off, [it] would affect the tax system's integrity . . . it is very important for the IRS itself to go after these people and put them out of business," he said. "People have to have confidence that if they receive some communication from the IRS, it is a real communication and they need to respond to it."

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Matthews agreed that visible prosecution of impersonation scammers would be positive. "Not only would those people get what they deserve, but it would increase people's understanding that these are just scams and frauds," he said.

Debt Collectors

IRS Commissioner John Koskinen recently noted one possible issue in the fight against phone scammers: the new requirement from the Fixing Ameri-

ca's Surface Transportation Act (P.L. 114-94) for the IRS to use private debt collectors for some tax debts. Koskinen said he is concerned that the new law could help phone scammers. (Prior coverage: *Tax Notes*, Dec. 21, 2015, p. 1456.)

Because the clear line of defense against phone scammers has been that the IRS does not call taxpayers first, introducing private debt collectors into the process could weaken that protection, especially if they are allowed to initiate contact with taxpayers with phone calls.

Grassley has not only been a proponent of the use of private debt collectors, but he recently pushed the IRS to implement the new provisions more quickly. (Prior coverage: *Tax Notes*, Mar. 14, 2016, p. 1254.)

In response to an inquiry by Tax Analysts, Grassley said, "The private debt collectors are meant to make calls that the IRS says it doesn't have the time or resources to make." He said they will be used for cases when the tax debt is not in question. He added, "According to the IRS's timeline for reinstating the private debt collection program, the IRS won't reinstate the program until April 2017. That gives the IRS plenty of time to make sure it addresses all taxpayer safeguards."

Hochman said private debt collectors should be very publicly identified so that taxpayers who could get a call from one can quickly determine if the caller is legitimate or a fraudster. Alternatively, the private debt collectors could be required to use the same mechanisms as the IRS and thus send written correspondence before making phone calls, he said. Proper protocols could help protect taxpayers from phone scammers claiming to be private debt collectors, and following those protocols could assure taxpayers that the communication is actually from a sanctioned private debt collector, Hochman said.

Koskinen has said the IRS is considering whether to send delinquent taxpayers letters mentioning that they are about to be approached by private debt collectors or asking the collectors to send advance notices themselves.

Matthews said the restrictions on tax debts eligible for private debt collection mean that the taxpayers who could receive communication from legitimate private debt collectors would have already received communication from the IRS concerning their tax debt. "If that collection agency is calling, it's not out of the blue," he said.

However, if properly funded, it would be better if the IRS did the collection activities because of issues such as taxpayer privacy and other rights, Matthews said. "The IRS is a bargain, the IRS is

efficient, and the return on investing in IRS resources is always" a large, positive multiple of the amount invested, depending on the branch funded, he said.

Prevalence of the Impostor Scams

In his 2015 testimony, Camus said TIGTA had received 366,000 reports of impersonation scam calls. In its March 2016 release, TIGTA reports that it is aware of more than 5,500 victims who have been fleeced of nearly \$30 million since October 2013.

Phone scammers have even called Tax Analysts employees. An informal poll of Tax Analysts' nearly 200 employees found 11, including the author, who had either received IRS impersonation phone calls or who had family members who had. Most reported receiving multiple calls, often from a variety of phone numbers. All of the scam calls reported, with one exception, were robocalls. ■