



December 4, 2013

Clayton Financial and Tax LLC  
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**Important Information Regarding  
IRS Tax Refund Fraud**

Dear Clayton Financial and Tax LLC:

As a valued Bank of the West customer, we want to provide you with information and tools to help protect your business and your bank accounts from financial fraud. The following important information is designed to alert you about a growing problem involving Tax Refund fraud.

The American Bankers Association (ABA) and Internal Revenue Service (IRS) have issued bulletins regarding a significant increase in the number of fraudulent tax refunds filed using stolen Social Security or Tax Identification Numbers. Tax refund fraud involves identity theft, fraudulent W-2 forms and the online filing of fraudulent tax returns for the purpose of receiving a tax refund deposit into the account of a fraudster or an accomplice acting on behalf of the fraudster. Variations of this fraud scheme also include using an unwitting tax preparation firm.

As a tax-preparation business owner, you should be alert to possible identity theft red flags. As outlined in the enclosed IRS External Leads Guidelines, you should communicate to your clients the requirement that tax refunds must be deposited directly into accounts that are in the tax filers own name or in the name of the tax filer and another, if it is a joint account. Review the instructions in your tax form for more information about direct deposit and the split refund option. Helpful tips regarding both options are also available in IRS Publication 17, Your Federal Income Tax. Publication 17 and IRS Form 8888 are available on the internet at IRS.gov or by calling the IRS at 1-800-TAX-FORM (1-800-829-3676).

In addition, financial institutions are asked to play an important role in the identification and prevention of tax refund fraud when a refund check is either negotiated or deposited into an account. The IRS has developed several programs that allow for financial institutions to return to the IRS, tax refunds which are not deposited to an account owned by the refund beneficiary.

To assist in the effort to reduce tax fraud losses to the American taxpayer, Bank of the West will leverage IRS programs to proactively identify tax refunds deposited to accounts that are not in the name of the tax filer. If Bank of the West is able to identify a mismatch of refund beneficiary and account owner, those refunds may be returned to the IRS. While this will not prevent the tax filer from receiving the refund, the refund will be distributed by means other than deposit to the account not owned by the tax filer. For your convenience, we have enclosed additional information from the IRS External Leads program to help you better understand the guidance.

We appreciate your business and thank you for choosing Bank of the West.

Sincerely,

*David Pollino*

David Pollino  
Fraud Prevention Officer

Enclosure

*In South Dakota, Bank of the West operates under the name Bank of the West California*

## Internal Revenue Service External Leads Guidelines

Generally, the Treasury's Financial Management Service (FMS) and IRS rules prohibit the deposit of refund checks payable to individual taxpayers to business accounts. IRS rules require a refund check to be in the name of the taxpayer and sent directly to the taxpayer (or an agent if the taxpayer has filed a power of attorney specifically authorizing the agent to receive a paper refund check). Treas. Reg. § 301.6402-2(f)(1). Similarly, rules at 31 CFR Part 210 and guidance in the FMS Green Book require financial institutions to deposit tax refunds to individuals paid by direct deposit to an account in the name of the taxpayer unless made to a pooled account in limited circumstances (such as for use for qualifying prepaid debit cards) or made to a master account established by a nursing home or religious order. The Anti-Assignment Act, codified at 31 U.S.C. § 3727(b), states that a transfer or assignment of any part of, or interest in, a claim against the United States may be made "only after a claim is allowed, the amount of the claim is decided, and a warrant for payment of the claim has been issued." See also, Treas. Reg. § 301.6402-2(f)(3).

No exception to these rules exists for tax return preparers. Return preparers cannot receive waivers from these rules from either the government or their customers. In fact, preparers subject themselves to \$500 penalties under IRC § 6695(f) each time they sign a customer's name to negotiate a tax refund check (including an electronic version of a check). Treas. Reg. § 1.6695-1(f); see also, 31 C.F.R. § 10.31. This rule covers direct deposits. The penalty does not apply when a financial institution or its employee serves as a return preparer for an account holder and then cashes a Treasury check endorsed by its customer or receives a direct deposit to the account holder's account at the financial institution.

IRS forms, instructions, and publications echo these deposit rules and list return preparer as an example. The instructions for Form 1040 state: "Do not request a deposit of any part of your refund to an account that is not in your name, such as your tax preparer's account." The instructions for Form 8888 which is used to split a tax refund among multiple accounts state: "Do not request a deposit of your refund to an account that is not in your name, such as your tax preparer's account." Publication 1345, *Handbook for Authorized IRS e-file Providers of Individual Income Tax Returns*, informs tax professionals that "Taxpayers should not request a deposit of their refund to an account that is not in their own name (such as their tax preparer's own account)."

While Bank of the West is not associated with the following websites, we suggest you visit them for further information on IRS Tax Refund preparation and distribution:

Internal Revenue Service:	<a href="http://www.irs.gov/uac/Tax-Fraud-Alerts">HTTP://www.irs.gov/uac/Tax-Fraud-Alerts</a> <a href="http://www.irs.gov/uac/Newsroom/Safeguard-Your-Refund-Choose-Direct-Deposit">HTTP://www.irs.gov/uac/Newsroom/Safeguard-Your-Refund-Choose-Direct-Deposit</a>
Identity Theft:	<a href="http://www.irs.gov/uac/Identity-Protection">HTTP://www.irs.gov/uac/Identity-Protection</a>
Tax Preparer Information:	<a href="http://www.irs.gov/for-Tax-Pros">HTTP://www.irs.gov/for-Tax-Pros</a>
NACHA Opt In Information:	<a href="https://www.nacha.org/node/1271">HTTPS://www.nacha.org/node/1271</a>
Taxpayers Guide to Identity Theft:	<a href="http://www.irs.gov/uac/Taxpayer-Guide-to-Identity-Theft">HTTP://www.irs.gov/uac/Taxpayer-Guide-to-Identity-Theft</a>