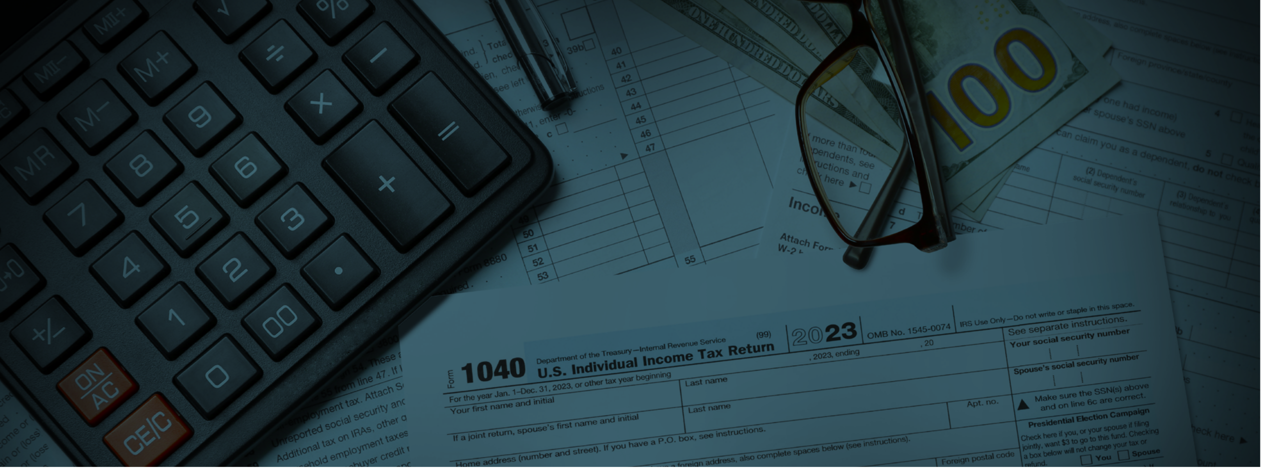

Scammed then Taxed:

How the Republican Tax Bill Hiked Taxes on Fraud Victims

A Report by the Majority Staff of

The U.S. Senate Special Committee on Aging

Chairman Bob Casey (D-PA)

April 2024

Contents

Note to Reader

The following report was developed by the Majority staff of the United States Senate Special Committee on Aging at the direction of Chairman Bob Casey (D-PA). This document has been developed for informational purposes. It does not represent findings or recommendations formally adopted by the Committee.

The report includes quotes and letters from experts and stakeholders with experience representing or working with scam victims facing tax liabilities, including attorneys, academics, and low-income tax clinics (see Appendix 2 for letters). Expert and stakeholder statements do not necessarily reflect an endorsement of this report nor its findings.

Executive Summary

For a century, taxpayers who experienced theft could claim a tax deduction to offset their losses: the casualty and theft loss deduction. In 2017, Republicans in Congress passed the Tax Cuts and Jobs Act of 2017 (TCJA), which effectively repealed this provision. As a result, victims of fraud and scams can no longer deduct those losses and are often obligated to pay taxes on money that has been stolen. At a time when fraud, scams, and related losses are steadily increasing, with older adults losing the most money, this change has been devastating for many Americans. In some cases, older adults are facing huge tax bills on top of losing all their assets, leading many in this situation to feel that they have been victimized twice.

The Senate Special Committee on Aging is responsible for protecting older adults from scams and exploitation. Majority Staff began investigating the harms caused by the repeal of this provision following constituent concerns and media reports. This Majority Staff report investigates this tax issue and the impact of the TCJA's added penalty for older adults who were victimized by fraud and scams. The report includes a history of the modern deduction and its evolution over the next century. It briefly reviews the origins of the TCJA, including the Republicans' goal to cut corporate taxes at the expense of the middle class. It details the TCJA's effective elimination of the theft loss deduction, including how, because of the TCJA, scam victims' tax filings do not reflect their true income—potentially affecting eligibility for public benefits and other tax deductions or credits.

This report also provides an overview of frauds and scams and their disparate impact on older Americans. Importantly, it captures the stories of older adults who lost their life's savings to scams, then were taxed on money they no longer had. For many scam victims, the change in law has been disastrous:

- Larry's retirement savings were stolen, and he then found he owed hundreds of thousands of dollars in federal taxes. He said, "After over 50 years in the workforce, my retirement dreams, and any legacy to pass on to my children have been stolen. … I think almost daily about what I should have done to prevent this from happening. I will probably continue to replay this event in my mind for the rest of my life."

- Helen lost nearly all her life's savings to scammers and then faced a $60,000 federal tax bill. Helen's son shared, "She lost most of her life's savings to the criminals and suffered significant financial and emotional distress as a result. She has entered a downward health spiral, and the emotional harm will affect her for the rest of her life."

- Robert faces tax bills on retirement funds he'll never get to use. He said, "My life is now changed forever, and my finances are in ruins. The peace of mind one hopes for and treasures in their golden years had vanished in an instant. I now live in the moment and [am] unable to make long-term plans. I battle against thoughts of despair, constant budget worries, and lack of self-worth."

Many victims found filing taxes after being defrauded to be highly technical and confounding. Additionally, the report examines the limited IRS data available on the deduction's utilization before and after the 2017 tax law went into effect, which show that older Americans used the deduction disproportionately. Last, this report includes statements from experts and stakeholders with experience representing or working with scam victims facing tax liabilities, including attorneys, academics, and low-income tax clinics.

Introduction

In 2020, Kate, a Pennsylvania widow in her mid-sixties, fell victim to a cruel romance scam that left her heartbroken and robbed her of her life savings. Then came another devastating surprise: Kate was on the hook for federal taxes on the stolen money. Kate, like many fraud victims, had withdrawn money from a pre-tax retirement account to pay the scammers, which was subject to income tax. The financial fallout from the fraud and the tax bill continue to have long-term and life-changing consequences for Kate, years after the initial scam.

Kate's experience is unfortunately not unique. Older Americans across the country are losing their life savings to scammers employing a range of schemes and outright fraud. On top of having their life savings stolen, since 2018, these victims can now face huge tax liabilities—sometimes hundreds of thousands of dollars—on stolen money they no longer have. In 2017, the Republican-led Tax Cuts and Jobs Act (TCJA) modified a provision of the tax code—called the casualty and theft loss deduction—that had been on the books for a century, essentially restricting its use solely to losses related to federally declared disasters. The theft loss provision had protected scam victims from having to pay income taxes on stolen funds. The Republican tax law has left older adults like Kate without a critical tool to protect themselves, at a time when fraud and scams are trending upward and related losses are on the rise.

The Senate Special Committee on Aging, led by Pennsylvania Senator Bob Casey, has a long history of protecting older Americans from fraud and scams. The Committee organizes an annual hearing on the topic and develops consumer resources focused on scam prevention. It also works to strengthen federal oversight on elder abuse and financial exploitation and operates a fraud hotline for consumers to report scams and connect with resources. Last year, the Committee celebrated the 10th year of its fraud hotline. In November 2023, the Committee organized a hearing focused on the rising prevalence of scams powered by artificial intelligence and published its annual Fraud Book that identifies the most common scams reported to the fraud hotline during the prior year.

This Majority Staff report continues the Committee's work of protecting older Americans against fraud, as it examines how the effective repeal of the theft loss deduction compounds the substantial financial losses older fraud victims suffer across the country.

Methodology

This investigation stems from constituent outreach directed to the Committee on the limited tax relief options available to scam victims. In response to these concerns, Majority staff conducted desk research, analyzed Internal Revenue Service (IRS) data, and met with relevant stakeholders. Specifically, Majority staff analyzed IRS Statistics of Income, Congressional Budget Office, and Joint Committee on Taxation (JCT) data, including supplemental information requested from IRS and JCT by Chairman Casey (see Appendix 1 for letters).[1] Majority staff also analyzed fraud data from the Federal Trade Commission (FTC) and the Federal Bureau of Investigation (FBI). Majority staff spoke with scam victims affected by the 2017 tax law, as well as other congressional committees and offices, federal agencies, professional organizations, academics, tax lawyers, and other subject-matter experts, including IRS, JCT, members of the American Bar Association Section of Taxation, low-income tax clinics, and AARP.

This report includes an analysis of IRS Statistics of Income estimates related to the casualty and theft loss deduction, though these data present some limitations that should be considered. Losses from casualty and theft are not categorized by the type of loss, which could include damage or loss from natural disasters, vandalism, or robbery, among other reasons. It is impossible to know the distribution of filers who used the deduction for theft losses, and scam victims are a subset of such filers. Additionally, the number of returns claiming the casualty and theft loss deduction are relatively small; thus, sample sizes may be limited in some cases, especially the supplemental data provided by JCT and IRS, which are mostly broken out by age and income categories or by state. Data from 2018 to 2021 may be especially subject to sampling error, as deduction claims dropped after passage of the TCJA, further limiting sample size.

Importantly, the TCJA made far-reaching changes to the tax code, which makes it difficult to attribute deduction utilization trends to a single change in the tax law. Lastly, Congress has expanded the casualty and theft loss deduction for qualified disaster losses over the years—such as from 2005 to 2008, 2008 to 2009, and in 2020.[2] Until 2017, these disaster loss claims were not categorized separately from the casualty and theft loss deduction

1 The Joint Committee on Taxation is a nonpartisan Congressional committee, whose staff assist Members of the majority and minority parties in both houses on tax legislation. The Joint Committee is involved with all aspects of the tax legislative process, including developing official revenue estimates for all tax legislation considered by Congress and investigating various aspects of the federal tax system. "Overview," The Joint Committee on Taxation, Congress of United States, last accessed March 26, 2024, https://www.jct.gov/about-us/overview/.

2 Internal Revenue Service, Department of the Treasury, *Publication 547: Casualties, Disasters, and Thefts*, (January 10, 2024), at 23, https://www.irs.gov/pub/irs-pdf/p547.pdf; for example, Katrina Emergency Tax Relief Act of 2005, P.L. No 109-73, 119 Stat. 2027, https://www.congress.gov/109/plaws/publ73/PLAW-109publ73.pdf#p=13; Emergency Economic Stabilization Act of 2008, P.L. No 110-343, 112 Stat. 3921, https://www.govinfo.gov/content/pkg/PLAW-110publ343/pdf/PLAW-110publ343.pdf#p=157; The Taxpayer Certainty and Disaster Tax Relief Act of 2020, P.L. No 116-260, 134 Stat. 3080, https://www.congress.gov/116/plaws/publ260/PLAW-116publ260.pdf.

claim totals, according to IRS.[3] Prior to 2017, disaster loss claims accounted for 10 to 30 percent of total casualty and theft loss deduction items each year.[4] From 2017 on, disaster loss claims accounted for about half of total casualty and theft loss deduction items.[5] IRS casualty and theft loss deduction data may still include claims from taxpayers who took the disaster loss expansion and itemized after 2017.[6]

3 Letter from Daniel I. Werfel, Commissioner, Internal Revenue Service, Department of the Treasury, to Senator Robert P. Casey, Jr., Chairman, Senate Special Committee on Aging, March 19, 2024 (on file with the Committee).

4 *Id.* Note that total casualty and theft loss deduction items from 2017 on include (1) the casualty or theft loss deduction, (2) the disaster loss deduction, and (3) the casualty or theft loss deduction of income-producing property.

5 E-mail from Internal Revenue Service staff to Aging Committee Majority staff, March 26, 2024 (on file with the Committee).

6 *Id.*

History of the Casualty and Theft Loss Deduction

The casualty and theft loss deduction has had a long-standing history in the tax code, and was established so that an individual's taxable income would reflect such losses, thus reducing the amount subject to tax. A modern form of the casualty and theft loss deduction has been on the books since the passage of the Revenue Act of 1913.[7] The law implemented a federal income tax and provided the following deduction: "losses actually sustained during the year, incurred in trade or arising from fires, storms, or shipwreck, and not compensated for by insurance or otherwise." The Revenue Act of 1916 raised income tax and added the theft language:

> Losses actually sustained during the year, incurred in <u>his business or</u> in trade, or arising from fires, storms, shipwreck, <u>or other casualty, and from theft, when such losses are</u> not compensated for by insurance or otherwise.[8]

The deduction underwent several modifications over the following century. The Revenue Act of 1964 imposed a $100 minimum loss per event, necessary to claim the deduction, limiting the deduction from being used for low-cost, day-to-day losses.[9] The Tax Equity and Fiscal Responsibility Act of 1982 further modified the deduction by requiring that total losses exceed 10 percent of the filer's adjusted gross income (AGI), further reflecting Congress's intent that the deduction be used by filers experiencing significant losses.[10] Congress has also at times expanded the deduction for disaster loss in response to specific natural disasters.[11]

Overall, amendments to the deduction, as well as other changes to the tax code, have reduced the number of people claiming it. In 1980, 2.9 million tax returns or 10 percent of

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7 The Revenue Act of 1913, P.L. No 63-16, 38 Stat. 167, https://fraser.stlouisfed.org/files/docs/historical/congressional/underwood-tariff-1913.pdf#page=54.

8 Emphasis added. The Revenue Act of 1916, P.L. No 64-271, 39 Stat. 759, https://govtrackus.s3.amazonaws.com/legislink/pdf/stat/39/STATUTE-39-Pg756.pdf#page=4.

9 The Revenue Act of 1964. P.L No. 88-272, 78 Stat. 43, https://www.congress.gov/88/statute/STATUTE-78/STATUTE-78-Pg19.pdf#p=25; Congressional Research Service prepared for the Committee on the Budget, United States Senate, *Tax Expenditures: Compendium Of Background Material on Individual Provisions*, (December 2022), at 1038, https://www.congress.gov/117/cprt/SPRT49569/CPRT-117SPRT49569.pdf#page=1054.

10 The Tax Equity and Fiscal Responsibility Act of 1982, P.L. No 97-248, 96 Stat. 422, https://www.congress.gov/97/statute/STATUTE-96/STATUTE-96-Pg324.pdf#p=99; Congressional Research Service prepared for the Committee on the Budget, United States Senate, *Tax Expenditures: Compendium Of Background Material on Individual Provisions*, (December 2022), at 1038, https://www.congress.gov/117/cprt/SPRT49569/CPRT-117SPRT49569.pdf#page=1054.

11 For example, Katrina Emergency Tax Relief Act of 2005, P.L. No 109-73, 119 Stat. 2027, https://www.congress.gov/109/plaws/publ73/PLAW-109publ73.pdf#p=13; Emergency Economic Stabilization Act of 2008, P.L. No 110-343, 122 Stat. 3921, https://www.govinfo.gov/content/pkg/PLAW-110publ343/pdf/PLAW-110publ343.pdf#p=157; The Taxpayer Certainty and Disaster Tax Relief Act of 2020, P.L. No 116-260, 134 Stat. 3080, https://www.congress.gov/116/plaws/publ260/PLAW-116publ260.pdf.

itemized returns included the casualty and theft loss deduction.[12] From 2010 to 2017, an average of 116,500 filers claimed the deduction annually.[13] Still, it offered those taxpayers a critical tool to limit their tax liability on lost income and made the measurement of a person's real income more accurate.

12 Congressional Research Service prepared for the Committee on the Budget, United States Senate, *Tax Expenditures: Compendium Of Background Material on Individual Provisions*, (December 2022), at 1040, https://www.congress.gov/117/cprt/SPRT49569/CPRT-117SPRT49569.pdf#page=1056.

13 Aging Committee Majority staff analysis of 2010 to 2017 data. "SOI tax stats – individual income tax returns complete report (publication 1304) – basic tables part 2, Table 2.1: Returns with Itemized Deductions: Sources of Income, Adjustments, Itemized Deductions by Type, Exemptions, and Tax Items, 2010-2017," Internal Revenue Service, last modified February 1, 2024, https://www.irs.gov/statistics/soi-tax-stats-individual-income-tax-returns-complete-report-publication-1304-basic-tables-part-2.

The Tax Cuts and Jobs Act of 2017

The 115th Congress marked the first time in a decade that Republicans held majorities in both the House and Senate and occupied the White House, and tax reform was one of their top priorities. The 2016 Republican Platform promised to reform the tax code to benefit businesses, by lowering tax rates that "discourage investment" or "are disincentives for economic growth."[14] President Trump's top legislative priority for his first 100 days in office was tax reform, promising "the largest tax reductions are for the middle class" and declaring "[t]he business rate will be lowered from 35 to 15 percent."[15]

On November 2, 2017, Rep. Kevin Brady (R-TX), then Chairman of the House Ways and Means Committee, introduced H.R. 1, the Tax Cuts and Jobs Act (TCJA).[16] He promised the bill would "deliver tax relief to businesses of all sizes" and would "deliver real tax relief to Americans across the country—especially low- and middle-income Americans."[17] President Trump hosted House Republican leaders at the White House the following day, where he touted "the biggest tax cut in our history."[18] He went on to commit, "We'll slash the corporate rate from 35 percent to no more than 20 percent. That's truly one of the big things in the bill."[19] Shortly thereafter, Senator Orrin Hatch (R-UT), then Chairman of the Senate Finance Committee, introduced the Senate companion and claimed the bill would "[help] Americans keep more of their hard-earned dollars" and "[modernize] the tax system in a way that will shift our economic landscape to make America a more inviting place for businesses."[20]

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14 GOP Party Convention, *Republican Platform 2016*, (2016), at 2, https://prod-cdn-static.gop.com/media/documents/DRAFT_12_FINAL%5B1%5D-ben_1468872234.pdf.

15 Amita Kelly and Barbara Sprunt, "Here Is What Donald Trump Wants To Do In His First 100 Days," *NPR*, November 9, 2016, https://www.npr.org/2016/11/09/501451368/here-is-what-donald-trump-wants-to-do-in-his-first-100-days.

16 "Chairman Brady Introduces the Tax Cuts and Jobs Act," House Committee on Ways and Means, November 2, 2017, https://waysandmeans.house.gov/chairman-brady-introduces-tax-cuts-jobs-act/; "H.R.1 - An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018," Actions, Congress.gov, last accessed March 26, 2022, https://www.congress.gov/bill/115th-congress/house-bill/1/all-actions.

17 "Chairman Brady Introduces the Tax Cuts and Jobs Act," House Committee on Ways and Means, November 2, 2017, https://waysandmeans.house.gov/chairman-brady-introduces-tax-cuts-jobs-act/.

18 "Remarks by President Trump at Meeting with House Republican Leaders and Republican Members of the House Ways and Means Committee," White House, November 2, 2017, https://trumpwhitehouse.archives.gov/briefings-statements/remarks-president-trump-meeting-house-republican-leaders-republican-members-house-ways-means-committee/.

19 *Id.*

20 "Hatch Unveils Pro-Growth, Pro-Jobs, Pro-Family Tax Overhaul Plan," Senate Finance Committee, November 9, 2017, https://www.finance.senate.gov/chairmans-news/hatch-unveils-pro-growth-pro-jobs-pro-family-tax-overhaul-plan-.

Congress passed the TCJA without a single Democratic vote.[21] Congressional Democrats, including Senator Casey, decried the legislation as a windfall for the wealthy, as it ultimately shifted the tax burden from corporations and billionaires onto the middle class.[22] Casey said of the law, "This is an insult to the many middle class families in Pennsylvania who will pay more in taxes under this scheme while the super-rich and big corporations get a windfall. …In 2019, the country's 572,000 richest households will see $34 billion worth of tax cuts, while the 90 million Americans making under $50,000 a year will see a fraction of that. That is both obscene and grossly unfair."[23]

President Trump signed the TCJA into law on December 22, 2017, with press reports calling it his "first big legislative win"[24] (see figure 1 for the TCJA text[25]). Shortly after signing the law, President Trump at Mar-a-Lago told his friends, "You all just got a lot richer."[26]

21 "H.R.1 - An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018," Actions, Congress.gov, last accessed March 26, 2024, https://www.congress.gov/bill/115th-congress/house-bill/1/all-actions; "Roll Call Vote, On the Motion (Motion to Recede from the Senate Amendment to H.R. 1 and Concur with Further Amendment), H.R.1," United States Senate, last accessed March 30, 2024; https://www.senate.gov/legislative/LIS/roll_call_votes/vote1151/vote_115_1_00323.htm; "Roll Call 699 | Bill Number: H. R. 1, On Motion to Concur in the Senate Amendment," United States House of Representatives, last accessed March 30, 2024, https://clerk.house.gov/Votes/2017699.

22 "Schumer Statement on GOP Tax Bill," Senate Democrats, December 1, 2017, https://www.democrats.senate.gov/newsroom/press-releases/schumer-statement-on-gop-tax-bill; "Casey on Passage of GOP's Windfall for the Wealthy," Senator Bob Casey, December 1, 2017, https://www.casey.senate.gov/news/releases/casey-on-passage-of-gops-windfall-for-the-wealthy; Thomas Kaplan and Alan Rappeport, "Republican Tax Bill Passes Senate in 51-48 Vote," *New York Times*, December 19, 2017, https://www.nytimes.com/2017/12/19/us/politics/tax-bill-vote-congress.html.

23 "Casey on Passage of GOP's Windfall for the Wealthy," Senator Bob Casey, December 1, 2017, https://www.casey.senate.gov/news/releases/casey-on-passage-of-gops-windfall-for-the-wealthy.

24 Jane C. Timm, "Trump signs tax cut bill, first big legislative win," *NBC News*, December 22, 2017, https://www.nbcnews.com/politics/politics-news/trump-signs-tax-cut-bill-first-big-legislative-win-n832141; Arnie Seipel and Danielle Kurtzleben, "Trump Celebrates Legislative Win After Congress Passes $1.5 Trillion Tax Cub Bill," *NPR*, December 22, 2017, https://www.npr.org/2017/12/20/572157392/gop-poised-for-tax-victory-after-a-brief-delay.

25 An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018, P.L. No 115-97, 131 Stat. 2087, https://www.congress.gov/115/plaws/publ97/PLAW-115publ97.pdf.

26 Kathryn Watson, "'You all just got a lot richer,' Trump tells friends, referencing tax overhaul," *CBS News*, December 24, 2017, https://www.cbsnews.com/news/trump-mar-a-lago-christmas-trip/.

Figure 1. The Tax Cuts and Jobs Act Modifies the Casualty and Theft Loss Deduction

SEC. 11044. MODIFICATION OF DEDUCTION FOR PERSONAL CASUALTY LOSSES.

(a) IN GENERAL.—Subsection (h) of section 165 is amended by adding at the end the following new paragraph:

"(5) LIMITATION FOR TAXABLE YEARS 2018 THROUGH 2025.—

"(A) IN GENERAL.—In the case of an individual, except as provided in subparagraph (B), any personal casualty loss which (but for this paragraph) would be deductible in a taxable year beginning after December 31, 2017, and before January 1, 2026, shall be allowed as a deduction under subsection (a) only to the extent it is attributable to a Federally declared disaster (as defined in subsection (i)(5)).

"(B) EXCEPTION RELATED TO PERSONAL CASUALTY GAINS.—If a taxpayer has personal casualty gains for any taxable year to which subparagraph (A) applies—

"(i) subparagraph (A) shall not apply to the portion of the personal casualty loss not attributable to a Federally declared disaster (as so defined) to the extent such loss does not exceed such gains, and

"(ii) in applying paragraph (2) for purposes of subparagraph (A) to the portion of personal casualty loss which is so attributable to such a disaster, the amount of personal casualty gains taken into account under paragraph (2)(A) shall be reduced by the portion of such gains taken into account under clause (i).".

PUBLIC LAW 115–97—DEC. 22, 2017

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to losses incurred in taxable years beginning after December 31, 2017.

The TCJA significantly changed federal income taxation,[27] substantially reducing the tax burden on the largest corporations[28] and putting more money in the pockets of the wealthiest Americans.[29] The law permanently slashed corporate tax rates from 35 percent to 21 percent,[30] temporarily modified tax rates for individuals,[31] and increased the standard deduction, among other changes.[32] The Congressional Budget Office estimated the TCJA would increase the federal deficit by nearly $1.9 trillion over ten years.[33] To pay for many of the law's tax cuts, the TCJA temporarily eliminated or otherwise significantly modified many individual credits, deductions, and exemptions, including those used by middle- and low-income Americans, like the casualty and theft loss deduction.[34] Many of these changes are set to expire in 2025.[35]

The TCJA narrowed the casualty and theft loss deduction to apply almost exclusively to those losses incurred from federally declared disasters.[36] The TCJA effectively eliminated the ability for fraud victims—and others who faced losses for reasons other than federally declared natural disasters—to avoid a tax penalty on top of their financial losses. University of Florida Law Professor Charlene Luke told the Committee, "With the change to the theft loss deduction, the tax system no longer operates as an insurer—albeit a partial one—of last resort for those unable to obtain a recovery of the funds or those who are not covered by insurance."[37]

Stakeholders expressed concern about the repeal's impact on older adults. Legal Action of Wisconsin told the Committee, "Undoubtedly, Congress has made it significantly harder for older adults to recover from financial victimization, directly because Congress removed the theft loss deduction provision in 165(h)(5) when it passed the 2017 Tax Cuts and Jobs Act."[38] Tax attorney James Creech added that, "the most troubling part of the theft loss limitation is that for victims of theft it leaves them feeling as if they have been

27 Congressional Research Service, *The 2017 Tax Revision (P.L. 115-97); Comparison to 2017 Tax Law* (February 6, 2018), at 1, https://crsreports.congress.gov/product/pdf/R/R45092.

28 Congressional Budget Office, *The Budget and Economic Outlook: 2018 to 2028,* (April 2018), at 109, https://www.cbo.gov/system/files/2019-04/53651-outlook-2.pdf; Tax Policy Center, *Effects of the Tax Cuts and Jobs Act: A Preliminary Analysis*, (June 13, 2018), at 13, https://www.taxpolicycenter.org/sites/default/files/publication/155349/2018.06.08_tcja_summary_paper_final_0.pdf.

29 "Briefing Book: What were the economic effects of the Tax Cuts and Jobs Act?" Tax Policy Center, updated January 2024, https://www.taxpolicycenter.org/briefing-book/what-were-economic-effects-tax-cuts-and-jobs-act.

30 Congressional Research Service, *The 2017 Tax Revision (P.L. 115-97); Comparison to 2017 Tax Law* (February 6, 2018), at 19, https://crsreports.congress.gov/product/pdf/R/R45092.

31 *Id.*, at 8.

32 *Id.*, at 10.

33 Congressional Budget Office, *The Budget and Economic Outlook: 2018 to 2028,* (April 2018), at 133, https://www.cbo.gov/system/files/2019-04/53651-outlook-2.pdf.

34 Congressional Research Service, *The 2017 Tax Revision (P.L. 115-97): Comparison to 2017 Tax Law* (February 6, 2018), at 1 and 15-16, https://crsreports.congress.gov/product/pdf/R/R45092.

35 *Id.*, at 5.

36 An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018 § 11044, P.L. No 115-97, 131 Stat. 2087, https://www.congress.gov/115/plaws/publ97/PLAW-115publ97.pdf.

37 Letter from Charlene Luke, University of Florida, to Senator Bob Casey, Chairman, Senate Special Committee on Aging, March 15, 2024. See Appendix 2 for full letter.

38 Letter from Legal Action of Wisconsin to Senator Bob Casey, Chairman, Senate Special Committee on Aging, February 20, 2024. See Appendix 2 for full letter.

victimized twice: once by the criminals; and then by the United States government which made them pay tax on the stolen income and now will not let them deduct their losses."[39]

The Republican tax law's elimination of the theft loss deduction resulted in a situation where scam victims' tax filings do not reflect their true income. Before the TCJA, theft victims could offset some of their losses by deducting them from taxable income, so that filings would accurately represent their income. Now, a taxpayer who has suffered a theft loss could be taxed on income they no longer have—challenging a dominant tax principle that one's tax liability should be proportional to one's ability to pay.[40] For example, if a retiree is scammed into withdrawing their pre-tax retirement funds, thus losing that money to theft, without the deduction, they are forced to treat the withdrawal as income on their tax filings, even though they did not benefit from the distribution of those funds.[41] This false increase to income may cause the retiree to pay additional taxes on the stolen withdrawn money (see figure 2 for an example of how the deduction works[42]). Furthermore, an inflated adjusted gross income may impact Medicare costs and eligibility for public benefits, such as Medicaid, subsidized housing, and Supplemental Nutrition Assistance Program (SNAP) benefits, as well as other tax credits and deductions, like the Child Tax Credit, which may be a lifeline for scam victims who have just lost their life savings.[43] Legal Action of Wisconsin cited an example of clients who, after being scammed into withdrawing their retirement funds, had to pay up to $419 more per month for their Medicare Part B premiums.[44]

39 Letter from James Creech, Baker Tilly US, LLP, to Senator Bob Casey, Chairman, Senate Special Committee on Aging, March 4, 2024. See Appendix 2 for full letter.

40 The ability-to-pay tax principle is the cornerstone of progressive taxation that underlies the individual income tax system in the United States. Progressive taxation is where marginal tax rates are dependent on income and higher income levels are taxed at higher rates, i.e., lower-income filers will generally pay less in taxes proportionally than higher-income taxpayers. Congressional Research Service, *Federal Income Tax Treatment of the Family,* (November 23, 2016), at 12, https://www.crs.gov/reports/pdf/RL33755/RL33755.pdf; Congressional Research Service, *Overview of the Federal Tax System in 2022* (June 8, 2022), at 6, https://www.crs.gov/reports/pdf/R45145/R45145.pdf.

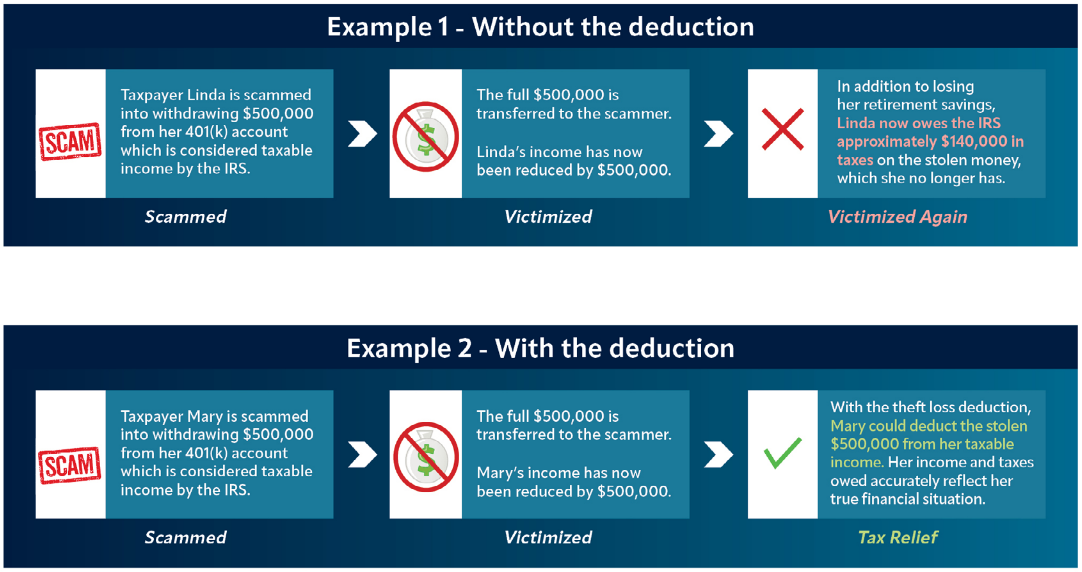
41 The prior version of the theft loss deduction could have also benefited someone who had money stolen from a bank account, not solely a tax-deferred account, presuming the taxes on that money were previously paid.

42 Letter from James Creech, Baker Tilly US, LLP, to Senator Bob Casey, Chairman, Senate Special Committee on Aging, March 4, 2024; Letter from Patrick Thomas, Frost Brown Todd LLP, to Senator Bob Casey, Chairman, Senate Special Committee on Aging, February 12, 2024. See Appendix 2 for full letters.

43 Letter from Legal Action of Wisconsin to The Honorable Bob Casey, Chairman, Senate Special Committee on Aging, February 20, 2024. See Appendix 2 for full letter. Senate Aging Majority staff email correspondence with Patrick Thomas, Frost Brown Todd LLP, January 14, 2024 (on file with the Committee).

44 Letter from Legal Action of Wisconsin to The Honorable Bob Casey, Chairman, Senate Special Committee on Aging, February 20, 2024.

Figure 2: How the Theft Loss Deduction Works



Notably, as it relates to theft victims, the TCJA largely restricted the casualty and theft loss deduction for individuals, though it did not limit the deduction for businesses that suffer losses, nor for individuals experiencing losses related to investments.[45] Thus, in theory, the casualty and theft loss provision still offers potential opportunities for tax relief for scam victims in certain situations. Currently, an individual can claim the deduction for money lost to theft or scams if the money was lost in connection to a business or to any transaction entered into for profit.[46] For example, victims of Ponzi schemes may still claim the casualty and theft loss deduction as investment losses in certain circumstances.[47] Some states also allow deductions within their state income taxes systems.[48]

45 An act to provide for reconciliation pursuant to titles II and V of the concurrentresolution on the budget for fiscal year 2018, P.L. No 115-97, 131 Stat. 2087, https://www.congress.gov/115/plaws/publ97/PLAW-115publ97.pdf; Letter from James Creech, Baker Tilly US, LLP, to Senator Bob Casey, Chairman, Senate Special Committee on Aging, March 4, 2024. See Appendix 2 for full letter.

46 26 U.S.C § 165(c); Letter from Leslie Book and Christine Speidel, Villanova University, to Senator Bob Casey, Chairman, Senate Special Committee on Aging, March 14, 2024. See Appendix 2 for full letter.

47 "Ponzi Scheme Questions and Answers," Internal Revenue Service, last updated March 17, 2022, https://www.irs.gov/newsroom/ponzi-scheme-questions-and-answers; "Examination of returns and claims for refund, credit or abatement; determination of correct tax liability," Revenue Procedure 2009-20, https://www.irs.gov/pub/irs-drop/rp-09-20.pdf. The number of individual income tax returns claiming a theft loss deduction under the Ponzi scheme safe harbor did increase significantly after 2017, when the Tax Cuts and Jobs Act went into effect. Aging Committee Majority staff analysis of Form 4684: Casualties and Thefts data from 2015 to 2021. "SOI Tax Stats - Individual Income Tax Returns Line Item Estimates (Publication 4801)," Internal Revenue Service, last modified February 23, 2024, https://www.irs.gov/statistics/soi-tax-stats-individual-income-tax-returns-line-item-estimates-publication-4801.

48 Filers in California, Hawaii, Louisiana, and Oregon may be able to claim the casualty and theft loss deduction beyond federally declared disasters at the state level, based on preliminary research by the Congressional Research Service.

However, in reality, these exceptions are difficult to access, as they are highly technical and may be difficult to decipher, even for tax professionals, let alone most taxpayers. For example, a scam victim's ability to claim the deduction comes down to intent, or whether the victim had a financial motive for entering into the transaction with the scammer, which leads to "profoundly disparate impacts" for someone victimized by a cryptocurrency investment scheme versus someone falling prey to a romance scam.[49] Further, Villanova University tax professors Leslie Book and Christine Speidel added that, "there is no formal guidance from the IRS concerning the possibility of taking profit related theft losses associated with imposter scams."[50] A staff attorney at the Legal Services of Northern Virginia Low-Income Tax Clinic, who has handled about a dozen cases involving older and disabled adults facing these issues, told the Committee that many tax professionals remain confused by the implications of the temporary elimination of the casualty and theft loss deduction.[51] "Even seasoned tax practitioners have counseled taxpayers that theft losses suffered from cryptocurrency investment scams cannot be deducted from gross income despite their obvious nature as 'transactions entered into for profit,'" she said.[52] This technicality and nuance applied to the deduction again raises the issue of equity. Tax attorney James Creech told the Committee:

> The tax law on theft losses is inequitable. Individual theft losses are limited, but business losses or theft losses in the conduct of a for-profit activity are not. What differentiates the two is a matter of facts and circumstances. Put in more plain language it is a complex area of the tax law where professional advice can make a difference between a loss being deductible or not. While it makes sense to do this for a high six-figure loss, it does not make economic sense to do this for a $50,000 or even a $100,000 loss given the deduction must be multiplied by the marginal tax rate. Engaging a tax attorney also requires that the taxpayer who suffered the loss knows a tax attorney or a sophisticated CPA, which many Americans, especially those in rural areas, may lack access to.[53]

Legal Action of Wisconsin noted that while its low-income tax clinic only has seven scam-tax liability cases, a small proportion of its overall caseload, the amount of time these cases require are disproportional to their numbers—the clinic has committed to such cases over 460 hours and counting.[54]

49 Letter from Patrick Thomas, Frost Brown Todd LLP, to Senator Bob Casey, Chairman, Senate Special Committee on Aging, February 12, 2024. See Appendix 2 for full letter.

50 Letter from Leslie Book and Christine Speidel, Villanova University, to Senator Bob Casey, Chairman, Senate Special Committee on Aging, March 14, 2024. See Appendix 2 for full letter.

51 Senate Aging Majority staff email correspondence with Walewska Watkins, Legal Services of Northern Virginia, March 5, 2024 (on file with the Committee); Letter from Legal Services of Northern Virginia to Senator Bob Casey, Chairman, Senate Special Committee on Aging, March 5, 2024. See Appendix 2 for full letter.

52 Letter from Legal Services of Northern Virginia to Senator Bob Casey, Chairman, Senate Special Committee on Aging, March 5, 2024. See Appendix 2 for full letter.

53 Letter from James Creech, Baker Tilly US, LLP, to Senator Bob Casey, Chairman, Senate Special Committee on Aging, March 4, 2024. See Appendix 2 for full letter.

54 Letter from Legal Action of Wisconsin to Senator Bob Casey, Chairman, Senate Special Committee on Aging, February 20, 2024. See Appendix 2 for full letter.

Similarly, the IRS's Offer in Compromise program is a possible relief avenue for scam victims who are facing tax liabilities that they cannot reasonably pay and who have exhausted all reasonable options to pay their tax bill. The program allows filers to settle tax debt for less than the total amount owed in certain cases, such as financial hardship.[55] However, the program is complex, burdensome, and harsh, according to stakeholders and scam victims. The process typically involves the submission of 50 to 100 pages of documents and is beyond what most people can do themselves, according to New Mexico Legal Aid Low Income Taxpayer Clinic Director Nathaniel Puffer, who said, "It's not realistic for low-income people to do an Offer in Compromise themselves because it's not affordable to hire a tax professional for a job that can take about 20 to 30 billable hours."[56]

Furthermore, the program has stringent qualification requirements.[57] IRS will consider all available assets, and "look at gross income and subtract the necessary living expenses and take the rest," according to Villanova University Associate Professor of Law Christine Speidel.[58] This could include assets such as a home—often older individual's most important and only asset—or income beyond a certain threshold, which might make the program undesirable for an older scam victim trying to build savings back up after losing all their money to fraud.[59] Legal Action of Wisconsin noted all but one of their attempts to secure offers in compromise for their clients were initially rejected.[60] They cited an example where a couple in their eighties lost more than $1 million to a scam and then requested an offer in compromise from the IRS to reduce their tax burden. The IRS did not accept their offer, instead asking the couple to sell their house—one of their few remaining assets—to pay their taxes.[61]

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55 "Offer in Compromise," Internal Revenue Service, last updated February 28, 2024, https://www.irs.gov/payments/offer-in-compromise.

56 Senate Aging Majority staff conversation with Nathaniel Puffer, New Mexico Legal Aid, March 11, 2024.

57 "Offer in Compromise," Internal Revenue Service, last updated February 28, 2024, https://www.irs.gov/payments/offer-in-compromise.

58 Senate Aging Majority staff conversation with Christine Speidel, January 26, 2024.

59 Letter from Legal Action of Wisconsin to Senator Bob Casey, Chairman, Senate Special Committee on Aging, February 20, 2024. See Appendix 2 for full letter.

60 *Id.*

61 *Id.*

Fraud and Scam Losses on the Rise

The elimination of the theft loss deduction comes at a time when consumers are facing growing losses from fraud (see figure 3 for fraud and scam loss trends[62]).[63] Americans lost an estimated $10 billion to nearly 2.6 million fraud incidents in 2023, according to the Federal Trade Commission (FTC).[64] The losses hit older Americans harder, with individuals 60 and older reporting higher median individual losses compared to other consumers.[65] Nearly 385,600 older Americans reported losing a total of more than $1.6 billion to fraud in 2022, though FTC estimates actual losses are as high as $48 billion.[66] Similarly, the Federal Bureau of Investigation (FBI) found that total losses reported by elderly victims to its Internet Crime Complaint Center (IC3) increased to $3.1 billion in 2022, up by 84 percent from the prior year.[67] Nearly 5,500 older victims lost more than $100,000 to scams in 2022, while more than 3,100 older victims lost at least that in 2021, and nearly 2,000 victims lost at least that much in 2020.[68] There has been a "shocking increase in the number of victims losing their entire life savings and retirement accounts," over the past two years, according to San Diego Deputy District Attorney and Head of Elder Abuse Prosecutions Scott Pirrello.[69] "The scammers are fleecing our victims of their liquid banking assets initially but then pivoting towards victim's (*sic*) investment accounts," he added.

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62 According to the Federal Trade Commission, the decrease between 2014 and 2015 is due primarily to the loss of a significant data contributor. Federal Trade Commission Consumer Sentinel Network, "All Fraud Reports by Amount Lost," data were last updated February 8, 2024, https://public.tableau.com/app/profile/federal.trade.commission/viz/FraudReports/FraudLosses; Federal Trade Commission, 2018 Consumer Sentinel Network Data Book, (February 2019), at 10, https://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-2018/consumer_sentinel_network_data_book_2018_0.pdf; Federal Trade Commission, 2017 Consumer Sentinel Network Data Book, (March 2018), at 10, https://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-2017/consumer_sentinel_data_book_2017.pdf; Federal Trade Commission, Consumer Sentinel Network Data Book for January – December 2016, (March 2017), at 7, https://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-january-december-2016/csn_cy-2016_data_book.pdf.

63 In 2018, the year the TCJA went into effect, the Federal Trade Commission received 1.4 million fraud reports reflecting $1.5 billion in total losses. In 2023, the number of fraud reports reached 2.6 million and losses $10 billion. Federal Trade Commission, *2018 Consumer Sentinel Network Data Book*, (February 2019), at 10, https://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-2018/consumer_sentinel_network_data_book_2018_0.pdf; Federal Trade Commission, *2023 Consumer Sentinel Network Data Book*, (February 2024), at 10, https://www.ftc.gov/system/files/ftc_gov/pdf/CSN-Annual-Data-Book-2023.pdf.

64 Federal Trade Commission, *2023 Consumer Sentinel Network Data Book,* (February 2024), at 10, https://www.ftc.gov/system/files/ftc_gov/pdf/CSN-Annual-Data-Book-2023.pdf.

65 Federal Trade Commission, *Protecting Older Consumers 2022-2023*, (October 18, 2023), at 26, https://www.ftc.gov/system/files/ftc_gov/pdf/p144400olderadultsreportoct2023.pdf.

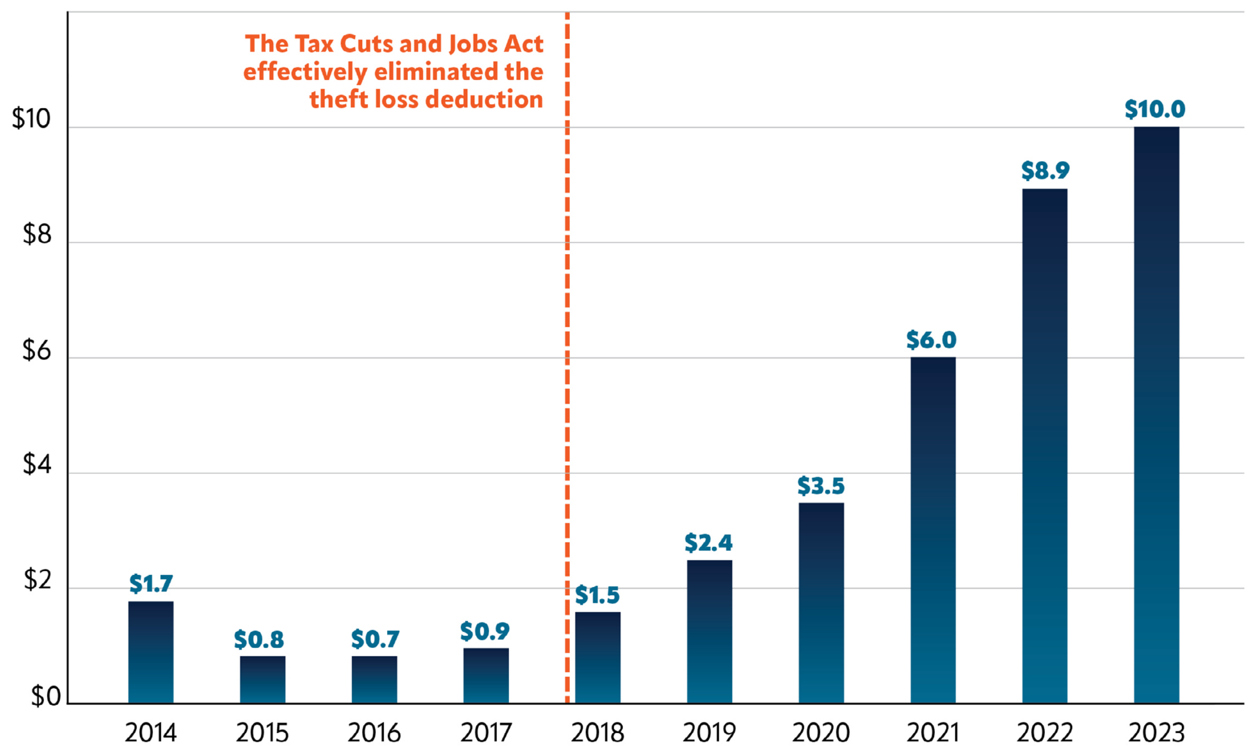
66 *Id.*, at 25-26.

67 Federal Bureau of Investigation Internet Crime Complaint Center, *2022 Elder Fraud Report*, (April 2023), at 3-4, https://www.ic3.gov/Media/PDF/AnnualReport/2022_IC3ElderFraudReport.pdf.

68 Federal Bureau of Investigation Internet Crime Complaint Center, *2022 Elder Fraud Report*, (April 2023), at 3, https://www.ic3.gov/Media/PDF/AnnualReport/2022_IC3ElderFraudReport.pdf; Federal Bureau of Investigation Internet Crime Complaint Center, *2021 Elder Fraud Report*, (April 2022), at 4, https://www.ic3.gov/Media/PDF/AnnualReport/2021_IC3ElderFraudReport.pdf; Federal Bureau of Investigation Internet Crime Complaint Center, *2020 Elder Fraud Report*, (June 2021), at 4, https://www.ic3.gov/Media/PDF/AnnualReport/2020_IC3ElderFraudReport.pdf.

69 Letter from Scott Pirrello, Office of the District Attorney, County of San Diego, to Senator Bob Casey, Chairman, Senate Special Committee on Aging, February 15, 2024. See Appendix 2 for full letter.

Figure 3. Fraud Losses Reported to the Federal Trade Commission, in Billions of Dollars



Source: Federal Trade Commission Consumer Sentinel Network Data

Common schemes reported by elderly victims to the FBI in 2022 include tech support and government impersonation scams,[70] which were responsible for at least $1.3 billion in losses among all victims reporting to the agency in 2023 (see figure 4 for an example of how these scams might work in combination[71]).[72] About 20,700 older adults lost a total of more than $770 million to such scams in 2023,[73] and nearly 100 elderly victims reported individually losing $1 million or more to such schemes the prior year.[74] In a report on protecting older consumers, the FTC found that older Americans lost the most to investment, business imposter, and romance scams in 2022, losing $404 million, $271 million, and $240 million to such scams, respectively.[75]

70 Federal Bureau of Investigation Internet Crime Complaint Center, *2022 Elder Fraud Report*, (April 2023), at 12, https://www.ic3.gov/Media/PDF/AnnualReport/2022_IC3ElderFraudReport.pdf.

71 Based on scam victim stories and Federal Bureau of Investigation's public service announcement. Federal Bureau of Investigation, "Public Service Announcement: 'Phantom Hacker' Scams Target Senior Citizens and Result in Victims Losing their Life Savings," September 29, 2023, Alert Number I-091223-PSA, https://www.ic3.gov/Media/Y2023/PSA230929.

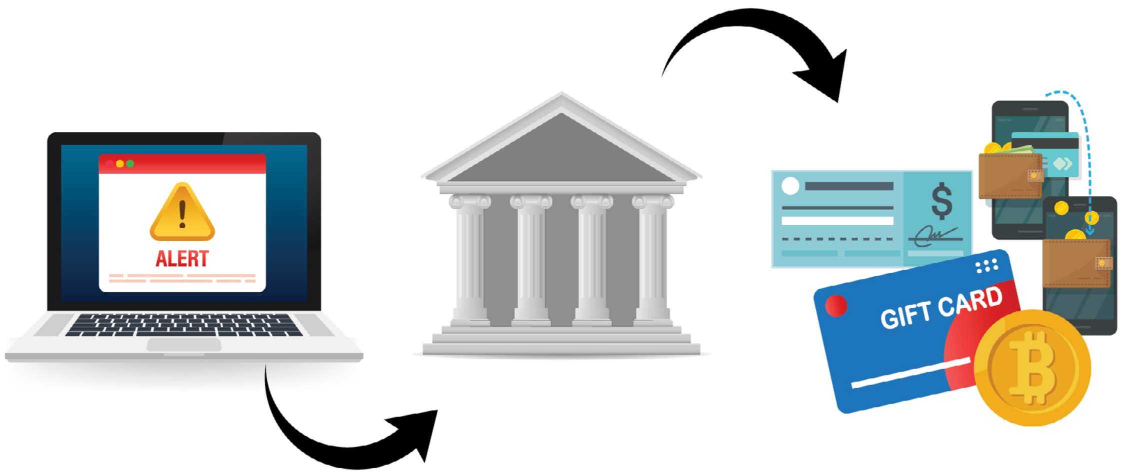
72 Federal Bureau of Investigation Internet Crime Complaint Center, *2023 Internet Crime Report*, (March 2024), at 15, https://www.ic3.gov/media/pdf/annualreport/2023_ic3report.pdf.

73 *Id.*

74 Federal Bureau of Investigation Internet Crime Complaint Center, *2022 Elder Fraud Report*, (April 2023), at 12, https://www.ic3.gov/Media/PDF/AnnualReport/2022_IC3ElderFraudReport.pdf.

75 Federal Trade Commission, *Protecting Older Consumers 2022–2023*, (October 2023), at 31, https://www.ftc.gov/system/files/ftc_gov/pdf/p144400olderadultsreportoct2023.pdf.

Figure 4. Example of Tech Support and Government Impersonation Scam



Tech Support Imposter

- A scammer posing as tech support contacts you through a phone call, text, email, or a pop-up window
- Tells you your accounts have been compromised and are under threat
- Scammer may direct you to install remote access software
- Scammer instructs you not to tell anyone
- May direct you to someone posing as a government official

U.S. Government Imposter

- Scammer poses as U.S. Government employee
- Tells you your computer and financial accounts have been hacked
- Scammer directs you to move your money to a "safe account" to protect your assets that they promise will be returned, sometimes with interest
- May provide official-looking letterhead to appear legitimate

Money moved to "Safe Account" that scammer controls

- The scammer may direct you to move varied sums of money on multiple occasions, over time through wire transfers, money orders, gift cards, or cryptocurrency
- The scammer may strategize with you as to how to avoid suspicion and avert questioning at your bank

Individuals are losing more money to scams than ever before,[76] and the methods scammers employ are increasingly professionalized and sophisticated.[77] Scammers can invest long periods of time cultivating their victims and preying on vulnerabilities, sometimes spending months to earn a victim's trust. Scammers are skilled at persuading, assuaging, diverting, and inciting a sense of urgency and fear among targets.[78] Fraudsters will also leverage personal information originating in data breaches and sold on criminal marketplaces to build credibility with their victims.[79] Older adults may be especially vulnerable to fraud and scams due to their social isolation.[80] Additionally, some studies suggest that older adults may be more trusting due, in part, to changes in the brain as individuals age.[81] They also may not know how to report suspected fraud to authorities.[82] Older victims with life savings and individual retirement accounts (IRAs) or 401(k)s—capital often accumulated over decades to be used in retirement when they can no longer work—are also prime targets for scammers.[83] Tax attorney James Creech told the Committee, "While anyone can fall victim to these scams, the criminals behind them most often target older Americans because they know that they are more socially isolated and have greater savings to steal."[84]

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76 Cora Lewis and Adriana Morga, "People are losing more money to scammers than ever before. Here's how to keep yourself safe," Associated Press, August 7, 2023, https://apnews.com/article/scams-phishing-robocalls-facebook-marketplace-291255fc54f4bef161cb6155af562d96.

77 Patrick J. Kiger, "6 Top Scams to Watch Out for in 2024," *AARP*, December 20, 2023, https://www.aarp.org/money/scams-fraud/info-2023/top-scammer-list.html.

78 *Modern Scams: How Scammers Are Using Artificial Intelligence & How We Can Fight Back*, *Hearing before the Senate Special Committee on Aging*, 118th Cong. (2023) (statement from Steve Weisman J.D., Editor of Scamicide.com), https://www.aging.senate.gov/imo/media/doc/1325ce4b-a18b-5f4f-e3f9-5ae835770f70/Testimony_Weisman%2011.16.23.pdf.

79 Federal Communications Commission, "'Grandparent' Scams Get More Sophisticated," February 1, 2024, https://www.fcc.gov/grandparent-scams-get-more-sophisticated; Sneha Dawda, Ardi Janjeva, and Anton Moiseienko, "The UK's Response to Cyber Fraud: A Strategic Vision," The Royal United Services Institute for Defence and Security Studies, February 22, 2021, at 9, https://static.rusi.org/cyber_fraud_final_web_version.pdf; Andrea B. Taylor, "7 Things to Do Right Away If You're a Victim of a Data Breach," *Kiplinger's Personal Finance*, March 4, 2020, https://www.kiplinger.com/slideshow/credit/t017-s001-data-breach-victims-things-to-do-right-away/index.html.

80 Mark S. Lachs and S. Duke Han, "Age-Associated Financial Vulnerability: An Emerging Public Health Issue," *Annals of Internal Medicine*, 163, no. 11 (December 2015), at 1 and 2, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4769872/pdf/nihms-761508.pdf; David Brancaccio, "Age of Fraud: Are Seniors More Vulnerable to Financial Scams?" *Marketplace*, May 16, 2019, https://www.marketplace.org/2019/05/16/brains-losses-aging-fraud-financial-scams-seniors/.

81 Elizabeth Castle et al., "Neural and behavioral bases of age differences in perceptions of trust," *Proceedings of the National Academy of Sciences*, 109, no. 51 (December 2012), at 20851, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3529090/pdf/pnas.201218518.pdf; David Brancaccio, "Age of Fraud: Are Seniors More Vulnerable to Financial Scams?," *Marketplace*, May 16, 2019, https://www.marketplace.org/2019/05/16/brains-losses-aging-fraud-financial-scams-seniors/.

82 Federal Bureau of Investigation, "Elder Fraud," last accessed March 29, 2024, https://www.fbi.gov/how-we-can-help-you/scams-and-safety/common-scams-and-crimes/elder-fraud.

83 National Institute on Aging, "Beware of Scams Targeting Older Adults," October 12, 2023, https://www.nia.nih.gov/health/safety/beware-scams-targeting-older-adults; National Association of Attorneys General, "Elder Justice," last accessed March 21, 2024, https://www.naag.org/issues/elder-justice/.

84 Letter from James Creech, Baker Tilly US, LLP, to Senator Bob Casey, Chairman, Senate Special Committee on Aging (March 4, 2024). See Appendix 2 for full letter.

Stories from Scam Victims

Older adults across the country are facing record rates of fraud and now, after the passage of the Tax Cuts and Jobs Act (TCJA), are left without a critical tool to mitigate their losses (see table 1 for scam victim locations by state[85]). Committee Majority staff spoke with older scam victims, their families, and their tax attorneys or certified public accountants to understand the many challenges stemming from the Republican tax law. This section recounts their experiences and the consequences of the elimination of the theft loss deduction. In some cases, the Committee used pseudonyms to protect victims' identities.

85 The locations are inclusive of the states noted in the scam victims' stories recounted below, as well as those shared by tax attorneys, low-income tax clinics, and other experts consulted in the course of the investigation. Senate Aging Majority staff conversation with Scott Pirrello, Office of the District Attorney, County of San Diego, November 17, 2023 and April 4, 2024; Senate Aging Majority staff conversation with Leslie Book, Villanova University, January 12, 2024; Aging Majority staff conversation with Patrick Thomas, Frost Brown Todd LLP, January 22, 2024; Senate Aging Majority staff email correspondence with Nathaniel Puffer, New Mexico Legal Aid, March 11, 2024 (on file with the Committee); Senate Aging Majority staff email correspondence with James Creech, Baker Tilly US, LLP, March 12, 2024 (on file with the Committee); Letter from Georgia scam victim to Senator Bob Casey, Chairman, Senate Special Committee on Aging, February 28, 2024 (on file with the Committee); Aging Majority staff email correspondence with Oregon scam victim, February 29 and March 1, 2024 (on file with the Committee); Letter from Legal Action of Wisconsin to Senator Bob Casey, Chairman, Senate Special Committee on Aging, February 20, 2024; Letter from Legal Services of Northern Virginia to Senator Bob Casey, Chairman, Senate Special Committee on Aging, March 5, 2024; Letter from Legal Aid of Southeast and Central Ohio, to Senator Bob Casey, Chairman, Senate Special Committee on Aging, March 7, 2024; Letter from Low Income Taxpayer Clinics, Legal Aid of Arkansas, to Senator Bob Casey, Chairman, Senate Special Committee on Aging, March 8, 2024; Letter from Alvin L. Storrs Low-Income Taxpayer Clinic, Michigan State University College of Law, to Senator Bob Casey, Chairman, Senate Special Committee on Aging, March 13, 2024. See Appendix 2 for full letters.

Table 1. Scam Victims' Location By State

1. Arkansas
2. California
3. Florida
4. Georgia
5. Indiana
6. Kentucky
7. Maryland
8. Michigan
9. Missouri
10. New Mexico
11. North Carolina
12. Ohio
13. Oregon
14. Pennsylvania
15. Texas
16. Utah
17. Virginia
18. Wisconsin
19. Washington

Table note: State locations of scam victims, including stakeholder clients and contacts.

Scam Victims' Narratives

(1) Kate, Retiree in her seventies, Pennsylvania

> *"The loss that hurts the most was losing his love and losing the family I thought I was going to have and what my new future was going to be. That is much harder to deal with than losing the money… though I was devastated to find there wasn't a tax break for me. I had to pay taxes on money I no longer had. Thousands of businesses get tax breaks for many reasons, so to find out this deduction was rescinded was devasting to me. It was another blow when I thought I was down as far as I could get. It felt personal. It felt like another kick in the gut."*

During the COVID-19 pandemic, Kate, a retired secretary and widow from Pennsylvania, connected through a Facebook friend request with a man posing as a United Nations surgeon based in Iraq.[86] Over the course of five months, they corresponded daily through an app the scammer convinced Kate to download, planning their future together, eventually including their marriage. The scammer's supposed children began to email Kate, calling her "mom." In time, Kate was conned into sending gift cards to cover what the scammer claimed were needed expenses. Over the next months, these requests multiplied. The charade culminated when "the surgeon" was to meet Kate for the first time, but en route, he claimed he was apprehended by the police for drug possession. Kate was asked to send $20,000 for bail, at which point she realized the scam. Ultimately, Kate lost $39,000 to the romance scam, depleting her late husband's life insurance and savings, and withdrawing most of her retirement assets.

After the initial heartbreak, Kate was further devastated to learn that she owed an additional $5,000 in federal taxes. She felt like this tax bill—a result of the rescission of the theft loss deduction—was another blow when she was already down. The money Kate lost to the scam and then paid to the Internal Revenue Service (IRS) to satisfy the federal tax bill had cascading effects, as it affected Kate's cash flow and limited her ability to pay for certain expenses, including repairs to her HVAC. Instead, Kate purchased a portable air conditioner unit that plugged into an extension cord that later caused a fire. Kate lost her house, all her possessions, and six hospice dogs in the fire nearly two years after the scam started.

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86 This narrative is based on conversations with the scam victim, her certified public accountant (CPA), her 2021 congressional testimony to the Senate Aging Committee, and a related AARP article, where her story is featured (hereinafter "Kate's story"). The scam victim and her CPA spoke with Senate Aging Majority Staff on November 15, 2023, and January 5, 2024, respectively. *Frauds, Scams and COVID-19: How Con Artists Have Targeted Older Americans During the Pandemic, Before the Senate Special Committee on Aging,* 117th Congress, at 8, 2021, testimony of Kate Kleinert, https://www.aging.senate.gov/imo/media/doc/Testimony_Kleinert%2009.23.21.pdf; Linda Lindberg, "Scam Jam 2023: The Story of Kate Kleinert," *AARP*, May 15, 2023, https://states.aarp.org/virginia/scam-jam-2023-the-story-of-kate-kleinart.

(2) Helen, Retiree in her eighties, California

> *"She lost most of her life's savings to the criminals and suffered significant financial and emotional distress as a result. She has entered a downward health spiral, and the emotional harm will affect her for the rest of her life… in addition to the trauma of the theft, she has experienced burdens as a result of the confusion created by the 2017 Tax Cuts and Jobs Act. Prior to TCJA, there would have been no question that our mom's theft loss was deductible. After 2017, the issue is so murky that the numerous experts we consulted disagree. It is poor public policy to put the burden on fraud victims to navigate an unclear and contradictory Tax Code. IRS instructions are unclear about how to deduct theft losses for grandmothers who are victims of fraud, if they are deductible at all." -Helen's Son*

Helen, a retiree in her mid-eighties from California, was targeted by the phantom hacker tech scheme, a type of the tech support and financial institution impersonation scam.[87] While reading her sister's obituary, Helen received a pop-up alerting her that a virus had infected her computer with instructions to call for help. The thieves impersonated a Microsoft agent and then a bank official. Even though Helen had not provided any information, less a phone number, the scammers knew where she banked, which led her to believe the scammers were credible. They convinced Helen that hackers had infiltrated her computer and were stealing from her accounts. She was tricked into downloading remote access software and told she needed to swiftly move her money to a different location to protect her assets. They told her that because it was a legal matter, she should not tell anyone about the hacked bank account and recovery strategy, not even family. Over nearly two months, the scammers conned Helen into transferring money to "a new account," purchasing gift cards, sending cashier's checks, and wiring money, until a bank teller alerted its fraud department. In total, scammers stole $277,000 from Helen—nearly all her life's savings.

On top of the huge financial loss, Helen faces a potential federal tax liability upwards of $60,000. To cover these additional costs, Helen may have to withdraw even more money from her individual retirement account (IRA), incurring further tax liabilities—a tremendous hardship for a retiree who has just lost close to all her assets and who can no longer work. Additionally, the lack of IRS tax guidance for scam victims has confounded Helen and her family, compelling them to seek professional help to understand her filings. Helen and her family consulted four accountants and two tax lawyers. These professionals offered contradicting advice, demonstrating the complexity and technicality of this

87 This narrative is based on conversations and email correspondence with the scam victim's sons, statements and documents on file with the Committee, and a related AARP article, where Helen's story is featured (hereinafter "Helen's story"). The scam victim's sons spoke with Senate Aging Majority Staff on November 20, 2023 and on February 7, 2024. Patrick Kiger, "Tech Support Scams are Rampant in 2023," AARP, June 21, 2023, https://www.aarp.org/money/scams-fraud/info-2023/fake-online-tech-support.html.

tax issue. Furthermore, Helen's family filed complaints with 16 entities, including law enforcement, government agencies, financial institutions, and other organizations. The family found the multitude of entities to which to report the scam to be confusing, and ultimately none were able to recover the stolen money or identify and prosecute the scammers.

(3) Rohan, Retiree in his seventies, Ohio

> *"The trauma of the initial realization of the fraud was immense. Having the FBI show up on your doorstep … It was an excruciatingly painful experience for our entire family."*
>
> *"The emotional stress where …you believe you may have to rely on your children in your old age is not something that they expected and has been very hard for them. As difficult as the realization of their changed situation has been, the outstanding tax issues have been equally, if not more, painful."*
>
> *"The treatment of our situation by the IRS given the current laws has re-victimized my family. The inability to claim theft losses against phantom income has taken two years of my in-laws' golden years and turned them into an endless saga of disappointment and questions of 'what if.' …I assure you, the emotional harm to my in-laws has been severe." -Victim's son-in-law*

Rohan, an Ohioan in his late seventies, fell victim to a government impersonation scam in 2021.[88] Scammers posing as Department of Homeland Security officials told him his identity had been stolen and that his U.S. citizenship was under threat, though he was naturalized nearly 40 years prior and had made the United States his home. The scammers knew where Rohan banked, and the amounts held at each institution—information that Rohan never shared with them—that added credibility to the scammers' claims. The scammers contacted Rohan at his office and on his cell phone with instructions to "safeguard his assets." He heeded their requests, sending two dozen wire transfers over the course of a year, without any questions or action from the banks he patroned. The scammers also told him to remain silent; sharing details of what was happening, they said, would jeopardize his citizenship. One day, the FBI arrived at Rohan's home to tell him he had been a victim of fraud. All in all, the scammers stole from Rohan more than $4 million—nearly all of his retirement savings and the legacy he meant to pass on to his children and grandchildren. Rohan and his family were in a state of horror. They were beyond devastated to learn that the scammers had been imposters, and that Rohan had

88 This narrative is based on a conversation with the scam victim's son-in-law, as well as a statement and documents on file with the Committee (hereinafter "Rohan's story"). The scam victim's son-in-law spoke with Senate Aging Majority Staff on February 23, 2024.

been robbed of his life's earnings that they hoped would sustain him and his wife in their final years.

Then came what Rohan's son-in-law called the 'second tragedy' of confronting the taxes owed on the stolen money, which he said was equally, if not more painful than the initial scam loss. Because Rohan liquidated his pension to send money to the scammers, he ran up a federal tax bill totaling more than $900,000 and a state tax bill of more than $90,000—money he no longer had. For nearly two years, Rohan, with the help of his family, has been working to settle his tax debt, including hiring tax attorneys—at great expense, attempting an Offer in Compromise (OIC) with the IRS, and then pursuing an IRS Taxpayer Advocate Service settlement. However, the process has been extremely difficult and traumatizing according to Rohan's son-in-law. "I cannot state strongly enough how complicated the OIC process has been and continues to be. I can no longer detail the various steps, agents, appeals and denials we have been through," he said. Additionally, in the process of negotiating with the IRS, one agent told Rohan that it was "ridiculous for anyone to fear losing their citizenship" and that he must have willingly sent the money to the fraudsters. While the family waits for a decision on the tax debt and a way forward, they continue to relive the pain of the initial scam and are prevented from "moving on from this nightmare."

(4) Suzanne and Dennis, Retirees in their seventies and eighties, Florida

> *"We never thought we'd be in this situation. We're living paycheck to paycheck. All I think is if this hadn't been done my husband wouldn't be so depressed… he sits in a chair all day now. We want to have a normal life without fear of homelessness. We worked hard all our lives. We're too old to get a job. My husband needs medication to sleep. I am awake nearly all night from stress."*
>
> *"If the deduction were reinstated, we'd be debt free."*

One Florida couple, in their seventies and eighties, was victim to a years-long scam devised by their daughter.[89] In 2016, the couple handed over their business to their daughter. Eventually, she convinced them that the enterprise was in trouble, citing allegations that the company had defrauded customers. The daughter told her parents that Dennis faced arrest unless fees were paid and a lawyer was hired, among other lies paired with requests for more money. All told, the couple was defrauded by their daughter out of more than $2 million. Ultimately, the daughter went to prison on felony charges, but the damage remains.

The scam resulted in an $800,000 federal tax bill. The couple has spent the past eight years trying to manage the tax aftermath, spending nearly $15,000 on professional services to help sort their filings. The couple went to court in 2023 to argue that the federal tax on the stolen money should be deductible, but the judge ruled that the law favors the IRS, though he stated that the "plaintiffs were the undisputed victims of a complicated theft." The judge's order further states, "The fact that these elderly plaintiffs are now required to pay tax on monies that were stolen from them seems unjust. … It is highly unlikely that Congress, when it eliminated the theft loss deduction beginning in 2018, envisioned injustices like the case before this Court." [90]

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89 This narrative is based on a conversation with the scam victims and their tax attorney, documents on file with the Committee, and court filings and related articles (hereinafter "Suzanne and Dennis' story"). The scam victims spoke with Senate Aging Majority Staff on January 23, 2024. Order Granting United States' Motion for Summary Judgment, *Dennis and Suzanne Gomas v. United States of America*, Case No. 8:22-cv-1271-TPB-TGW, United States District Court, Middle District of Florida, Tampa Division, July 17, 2023, https://ecf.flmd.uscourts.gov/cgi-bin/show_public_doc?2022-01271-39-8-cv; Michael Laris, "How Congress leaned on crime victims to pay for Trump-era tax cuts," *Washington Post*, December 14, 2023, https://www.washingtonpost.com/dc-md-va/2023/12/14/congress-crime-victims-2017-trump-tax-cuts/; Kelly Phillips Erb, "Taxpayers Are Liable For Taxes On $1.2 Million – Even If Their Daughter Stole It," *Forbes*, July 19, 2023, https://www.forbes.com/sites/kellyphillipserb/2023/07/19/taxpayers-are-liable-for-taxes-on-12-million-even-if-their-daughter-stole-it; Andrew Keshner, "Elderly couple ripped off by daughter takes a $400,000 tax hit on the stolen $2 million," *MarketWatch*, July 23, 2023, https://www.marketwatch.com/story/elderly-couple-was-swindled-out-of-2-million-by-daughter-now-they-have-to-pay-taxes-on-the-stolen-money-120b8ee4.

90 Order Granting United States' Motion for Summary Judgment, *Dennis and Suzanne Gomas v. United States of America*, Case No. 8:22-cv-1271-TPB-TGW, United States District Court, Middle District of Florida, Tampa Division, July 17, 2023, https://ecf.flmd.uscourts.gov/cgi-bin/show_public_doc?2022-01271-39-8-cv.

The couple is appealing and continues to deal with the consequences still today. Suzanne told Committee staff that they have taken out loans and now use a credit card for purchases. At one point, they did not have the money to cover basic expenses, including their mortgage and utilities. The couple faced foreclosure, had their electricity and water shut off for months, and relied on charity and food pantries to make it by. Still, the couple puts their faith in God, chooses to remain positive, and hopes for a legislative change to allow them access to the theft loss deduction, which would bring much needed relief and enable them to live the rest of their days without worrying about money.

(5) Larry, Retiree in his seventies, Pennsylvania

> *"I lost $765,000 to the scam, and it left me owing a huge amount of money to the IRS… After over 50 years in the workforce, my retirement dreams, and any legacy to pass on to my children have been stolen. I had plans on making home improvements, to renovate my kitchen, but I can't now. I wanted to travel in retirement, but that will be curtailed. My son is hurting financially now, and I can't help him… I think almost daily about what I should have done to prevent this from happening. I will probably continue to replay this event in my mind for the rest of my life. There needs to be more awareness that these types of scams exist and about the form they take…"*
>
> *"As I understand the tax code, I am not eligible to claim a deduction due to the 2017 changes passed by Congress. I support efforts towards passing a bill to provide help for victims like me. There should be some tax relief for victims of these crimes."*

Larry, a retiree from Pennsylvania in his mid-seventies, fell victim to a tech and government impersonator scam in fall 2023.[91] Larry received a pop-up while attempting to access his IRA, alerting him to security issues on his account. After several phone calls, he was rerouted to someone impersonating a Social Security Administration official. Over the course of a month, the "official" deceived Larry into thinking his Social Security number was compromised and that his assets were under imminent threat. Larry was advised not to tell anyone. He was tricked into withdrawing money from his IRA, 401(k), and savings account to buy cryptocurrency. Shortly after the third and final wire transfer, Larry received a call from an FBI agent, who told him he had been caught up in a fraud ring. Larry then realized that his hard-earned retirement savings, totaling $765,000, had been stolen from him.

On top of this enormous loss and traumatizing experience, Larry owed to the IRS more

91 This narrative is based on a conversation with the scam victim, as well as a statement and documents on file with the Committee (hereinafter "Larry's story"). The scam victim spoke with Senate Aging Majority Staff on February 14, 2024.

than $220,000 in federal taxes on the stolen money, which he did not have. He looked to the IRS for tax filing assistance, though agency officials were of little help and their resources were limited. The local IRS office where Larry lives did not offer in-person meetings, and when he was eventually able to get an appointment at an IRS office in a neighboring city, the official he met with was not trained on scams. Larry had to deplete the remainder of his savings and borrow from his brother to pay the federal tax bill on the money of which he was robbed.

(6) Christopher, Retiree in his sixties, California

> *"Since this happened, I try to live each day as best I can and not think about what happened, my stupidity, and whether or not my remaining funds and pension will meet my future financial needs. I fight stress, anxiety, and depression that will suddenly hit me at any time of day or night. Any 'trigger' such as seeing a picture of myself 30 years ago, will result in depression about how I used to live relatively carefree, but not anymore."*
>
> *"It all seems so unfair!" [on having to pay taxes on the stolen money, and the subsequent impact on Medicare costs resulting from not having the theft loss deduction.]*

Christopher, a retired engineer in his late sixties from California, fell victim to a crypto scam in fall 2022.[92] Christopher made a connection through social media with a young woman. The relationship started with daily exchanges and pleasantries that helped to earn his trust. Eventually, the woman broached crypto investments. She told Christopher that her aunt had strategies to "buy long and sell short" to make high returns on investment. Christopher made an initial deposit into the crypto platform that he was directed to by the scammers, and he quickly saw his assets soar. He was even able to make an initial withdrawal. This convinced him that the platform was sound, and that the strategy worked; so, he invested more. After putting in nearly half a million dollars over the course of five months, mostly from tax-deferred accounts, his contact told him there would be another opportunity to see high returns if he would send hundreds of thousands more. That is when Christopher realized that much of his life's savings—$455,000—was lost to the scam.

After coming to terms with the scam, Christopher faced federal tax bills totaling about $248,000 and state tax bills totaling about $84,000 over the two-year period, which he said was so unfair after such a devastating loss. Additionally, the elimination of the theft loss deduction has impacted his life in other ways: because Christopher withdrew large sums of money from his 401(k), it substantially increased his adjusted gross income (AGI)—the

92 This narrative is based on a conversation with the scam victim, as well as a statement and documents on file with the Committee (hereinafter "Christopher's story"). The scam victim spoke with Senate Aging Majority Staff on January 5, 2024.

basis for which Medicare premiums are calculated—regardless that he no longer had it. Christopher's Medicare bill increased from the prior year. He also owes more than $2,450 for Medicare overpayments. In addition, Christopher is worried the increased AGI will affect his wife's Medicare costs as well.

(7) Sally and Bill, Retirees in their seventies, California

> *"Current tax law does not allow my parents to claim any of the fraud loss. The situation has created an incredible amount of stress for my parents and their extended family, and it is exacerbated by my father's serious health condition. He is currently undergoing treatment for advanced cancer, and the added emotional stress of losing their entire retirement savings plus the tax liability led my parents to seek help so they can focus on his health."*
> *-Victims' son*

Retirees Sally and Bill, who are in their seventies, were victims of a bank impersonator scam.[93] In 2021, Sally received a call from a man posing as a bank representative, who alerted her to suspicious activity on her credit card, telling her the account had been compromised. She described him as highly experienced and very convincing. He eventually tricked her into cash advancing $27,000 on the card. The scammers likewise told the couple that their other accounts were under threat, persuading them to move their assets into "special accounts" to protect the money. The scammers instructed them not to tell anyone about the investigation under any circumstances, not even family. Over five months, they were conned into making a series of wire transfers, slowly draining their entire retirement account. During this time, the bank twice sent social workers from the county office on Aging and Elder Abuse, who expressed concern about the couple's ability to take care of their own finances, which they found to be insulting and a threat to their independence. By the end of the scam, the couple had more than $900,000 stolen from them.

In addition to losing their life's savings, they also owe about $240,000 in federal taxes, and about $65,000 in state taxes, and nearly $35,000 on a credit card with a 23 percent interest rate. Sally expressed embarrassment that they were taken, as well as despair, as they do not have the money to cover the taxes on the stolen funds—the amount of which keeps growing with penalties and fees as a result. At the same time the couple was reckoning with the scam and the tax implications, they learned that Bill had late-stage cancer. This development further complicated their lives, added to their stress, and limited the time they were able to devote to sorting out their filings. The couple felt forced into hiring a tax professional to help them file an Offer in Compromise for a fee of $22,500—money that Sally put on a credit card. However, the family has received limited status updates on their case, while they continue to worry about the outcome. They are

93 This narrative is based on a conversation with the scam victims and documents on file with the Committee, as well as a statement provided by the victims' son (hereinafter "Sally and Bill's story"). The scam victims spoke with Senate Aging Majority Staff on November 28, 2023 and March 13, 2024.

concerned the IRS will put a lien on their house. The couple also told the Committee that despite reporting the case to the Federal Bureau of Investigation (FBI), the Federal Trade Commission (FTC), and local police, they have not yet received any help. They considered hiring an attorney to try and recoup the funds, but at $1,000 to $1,500 an hour, and in part because the attorneys they consulted were reluctant to take on their case, they decided against it.

(8) Richie, Retiree in his sixties, Utah

> *"I think about what I had, what I could have had, and what I got… It is so unfair losing all that money and having to pay the tax obligation for the crooks."*

After working 37 years as a U.S. letter carrier in Utah, Richie, in his sixties, was swindled out of his life savings in a tech support and government impersonator scam.[94] In July 2021, Richie's laptop froze, and a pop-up directed him to call a number. The person on the line who claimed to work for Microsoft told Richie that his Social Security number was compromised, and that there were two fraudulent charges made to his bank account. The scammers knew where Richie banked, though he never gave the scammers that information. Richie was then connected to a Social Security Administration impersonator who tricked him into wiring money from his bank to accounts directed by the scammers in order to "keep his assets safe." He was also conned into completing a form to have a new Social Security number issued, unknowingly giving the scammers all his personal identifying information. Over the course of the month, Richie sent 11 wire transfers, totaling more than $567,000, until eventually the scammers ceased all communications. The money Richie had saved his entire life was stolen—the money he was going to use as a down payment on a new home. Weeks before the scam, Richie had intended to close on a lot with a newly built house he had contracted. Being defrauded cost Richie his dream home. Instead, he was forced to move into a motel for a time.

In addition to these losses, Richie faced federal and state tax bills on the stolen money, totaling more than $44,000—money he no longer had. Richie was forced to hire a lawyer to help him navigate the complicated tax process, which cost an additional $6,000. The lawyer helped Richie get his federal tax obligation reduced from $32,000 to about $23,500.

94 This narrative is based on conversations with the scam victim, as well as a statement and documents on file with the Committee (hereinafter "Richie's story"). The scam victim spoke with Senate Aging Majority Staff on November 29, 2023 and March 12, 2024.

(9) Robert, Retiree in his seventies, Pennsylvania

> *"When I found out I was scammed, I had suicidal thoughts. I wanted to give to charity and to my nieces and nephews, and now I feel shame because I can't."*
>
> *"If I knew they'd forgive my taxes tomorrow, I could close the book and move on with my life… I could build a life again. This tax thing is another painful layer. The taxes are going to wipe out the few resources I have left."*
>
> *"My life is now changed forever and my finances are in ruins. The peace of mind one hopes for and treasures in their golden years had vanished in an instant. I now live in the moment and [am] unable to make long term plans. I battle against thoughts of despair, constant budget worries, and lack of self-worth. Why did I agree to give all of it away? I keep asking myself. How could I be so gullible, careless, stupid, etc.? Besides my long-term worries, I now have a tax liability that I neither received nor benefited [from]. I'm just now asking kindly to grant me tax leniency or forgiveness."*

Robert, a retired librarian in his seventies from Pennsylvania, had his life's savings stolen in a bank impersonation scam.[95] In January 2023, Robert received a pop-up on his screen that instructed him to call his bank's security department. The scammer on the line convinced Robert that his accounts, along with those belonging to 21 others, were under imminent threat. He was told that the FTC was on the case, but that he was to remain silent or risk losing his money in addition to everyone else's. Over the next five months, through several calls each week, the scammers earned Robert's trust and eventually persuaded him to move money from his accounts to a temporary "settlement fund" through money orders, cashier's checks, and wire transfers. They promised this money would eventually be restored to him with interest. Robert was convinced that through his silence and actions he was helping the other 21 victims whose accounts were under threat. When Robert's bank froze his account due to illegal activity, he realized the scam. He had had nearly $515,000 stolen from him. Robert was in shock and denial, and in such despair that he contemplated taking his life.

In addition to his devastating losses, Robert is also facing a tax bill on the retirement funds he never received, which he finds to be painful and unsettling. He estimates the tax bill to exceed $12,000 and told the Committee that it will be enormously difficult to move on with his life with the looming tax liability. He is currently sustaining himself on the small remainder of his savings, a small annuity, Social Security payments, and food stamps. However, he is concerned the taxes are going to deplete the few resources he has remaining and is having trouble sleeping as a result.

95 This narrative is based on conversations with the scam victim, as well as a statement and documents on file with the Committee (hereinafter "Robert's story"). The scam victim spoke with Senate Aging Majority Staff on February 28, 2024.

(10) Arjun, Scientist in his sixties, California

> *"I am writing to you today with a heavy heart, seeking your assistance and guidance in an incredibly distressing situation that has consumed my life. I believe it is imperative to bring this matter to your attention, as it has left me emotionally and financially shattered. I am devastated beyond words. This ordeal has left me emotionally drained and financially depleted."*

Over four months in 2020, Arjun was encouraged to invest in an online currency exchange profit venture through a connection made on social media. After investing a portion of his retirement savings and seeing exponential returns on the platform, he invested more money.[96] When Arjun requested to withdraw a portion of these funds, the scammers told him he first needed to pay a withdrawal fee. He paid another $21,250, but he still could not withdraw the money, which was the moment he realized the venture was a farce. In total, scammers stole from Arjun $744,250.

"My agony did not end there," he told the Committee: Arjun owed a huge federal tax bill on the half million dollars he withdrew from his IRA. Additionally, because he had withdrawn from his retirement savings while under age 59 and a half—thinking that he would be able to replenish the account before incurring a penalty—he was charged a 10 percent early withdrawal penalty by the IRS, in addition to the federal taxes on the distribution. The taxes and penalties totaled nearly $255,000—money Arjun did not have. Arjun sought help to submit his filings and hired a tax consultant for $15,000, who advised him to claim the theft loss deduction allowances for Ponzi schemes. Despite the professional assistance, his efforts were unsuccessful. The IRS ultimately found that Arjun's case did not qualify for tax relief under this allowance, citing there were no related indictments, nor criminal or civil complaints associated with the lead figure in the case. In the end, Arjun had to take out a home equity loan to satisfy the federal tax debt. Moreover, Arjun has taken "every conceivable step to report this matter to the FBI, local law enforcement in Hong Kong [where he believes the fraudsters to be located] and financial regulatory bodies, as well as seeking assistance from [several banks]," but to no avail.

96 This narrative is based on conversations with the scam victim, as well as a statement and documents on file with the Committee (hereinafter "Arjun's story"). The scam victim spoke with Senate Aging Majority Staff on January 17, 2024.

Common Challenges Cited by Scam Victims

These heartbreaking stories from older scam victims across the country feature commonalities across narratives (see figure 5). Nearly everyone who spoke with Committee staff said that paying federal, and often state taxes, after being defrauded felt like an insult to injury.[97] It was the unexpected additional cost that felt unfair, given that the victims had received no benefits from the income on which they were being taxed.[98] "For seniors without future earning capacity, these losses are frequently paid for by cuts in their standard of living," according to tax attorney James Creech.[99] "For a middle-class retiree even a modest $20,000 loss from a 401(k) account, plus the tax bill from the distribution, can imperil many of the anticipated joys of retirement," he added. Legal Action of Wisconsin noted that some older adults see the IRS place liens or foreclose on their personal residences and seize remaining funds in their bank accounts, noting, "the result will frequently be economic devastation, and they wind up with only Social Security to cover their expenses in old age."[100]

Many victims found filing taxes after a scam to be technical and confounding.[101] While the IRS does offer some resources for victims of financial fraud,[102] many scam victims and stakeholders who spoke with the Committee reported that the IRS has little to no helpful guidance for them to navigate their situations.[103] Some victims were compelled to hire professional tax help—an additional burden and cost[104] —though the experts they consulted often offered conflicting advice.[105] San Diego Deputy District Attorney and Head of Elder Abuse Prosecutions Scott Pirrello described a situation where "the victim goes to the IRS' website and unfortunately there are zero resources posted for scam victims. The victim's next move is often to look up tax services agencies or law firms that advertise their services to help victims like this and of course need to bill the victim an additional $10,000 – $30,000 to contest the IRS bill."[106] There are even more complications for scam victims who received retirement distributions while under the

97 For example, see Kate, Suzanne and Dennis, and Richie's stories.

98 For example, see Kate, Robert, and Christopher's stories.

99 Letter from James Creech, Baker Tilly US, LLP, to Senator Bob Casey, Chairman, Senate Special Committee on Aging, March 4, 2024. See Appendix 2 for full letter.

100 Letter from Legal Action of Wisconsin to Senator Bob Casey, Chairman, Senate Special Committee on Aging, February 20, 2024. See Appendix 2 for full letter.

101 See Helen and Larry's stories.

102 IRS resources include: Topic #515, Casualty, disaster, and theft losses; Publication 547, Casualties, Disasters, and Thefts; Publication 584, Casualty, Disaster, and Theft Loss Workbook; Instructions for Form 4684, Casualties and Thefts; Letter from Daniel I. Werfel, Commissioner, Internal Revenue Service, Department of the Treasury, to Senator Bob Casey, Chairman, Senate Special Committee on Aging, March 19, 2024 (on file with the Committee).

103 See Helen and Larry's stories; Letter from Scott Pirrello, Office of the District Attorney, County of San Diego, to Senator Bob Casey, Chairman, Senate Special Committee on Aging, February 15, 2024; Letter from Leslie Book and Christine Speidel, Villanova University, to Senator Bob Casey, Chairman, Senate Special Committee on Aging, March 14, 2024. See Appendix 2 for full letters.

104 For example, see Helen, Rohan, and Suzanne and Dennis' stories.

105 For example, see Helen's story; Letter from Legal Services of Northern Virginia to Senator Bob Casey, Chairman, Senate Special Committee on Aging, March 5, 2024. See Appendix 2 for full letter.

106 Letter from Scott Pirrello, Office of the District Attorney, County of San Diego, to Senator Bob Casey, Chairman, Senate Special Committee on Aging, February 15, 2024. See Appendix 2 for full letter.

age of 59 and half: they faced an additional 10 percent early withdrawal penalty from the IRS, though they had intended to replenish those funds in the allowable timeframe before realizing their money had been stolen.[107]

Tax attorney Patrick Thomas stated that the casualty and theft loss tax deduction is so technical that there may be confusion among front-line IRS reviewers, which could result in inconsistent reviews across tax returns.[108] The Committee found that some scam victims reported success in claiming the theft loss deduction as an investment allowance,[109] but in another case the IRS did not accept a Ponzi scheme claim without an indictment or civil or criminal complaint[110] — the issuance of which may be difficult in online scam cases. In another instance, the IRS partially disallowed one scam victim's casualty loss deduction claim, stating that the deduction is only allowed for federally declared disasters from 2018 to 2025, but the agency cited the wrong law.[111]

Additionally, some victims said that they felt embarrassed about falling victim to a scam and did not tell anyone for a period out of shame.[112] This embarrassment may also compound the financial impact felt by older scam victims, according to staff from Legal Action of Wisconsin.[113] "Too often, the shame, fear, and embarrassment that follow being scammed or financially exploited are themselves roadblocks to seeking help, and too many people spiral into a debt that is made even worse at tax time," they said.[114] Other victims were in denial initially, requiring loved ones to intervene.[115] Many victims became concerned about their finances and how they might sustain themselves at an age when they are unable to go back to work.[116] Several victims experienced unbearable grief and despair.[117] Two victims told the Committee that their bank had sent Adult Protective Services representatives to their home to check on their mental capacity, one of whom found the visits to be a threat to independent living.[118]

Many victims expressed confusion about which agency, company, or law enforcement authority to turn to, and often when they did reach out, they were offered little or no

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107 See Arjun's story; "What if I withdraw money from my IRA?" Internal Revenue Service, last updated January 30, 2024, https://www.irs.gov/newsroom/what-if-i-withdraw-money-from-my-ira#:~:text=Generally%2C%20early%20withdrawal%20from%20an,premium%20after%20a%20job%20loss.

108 Based on Senate Aging Majority Staff conversation with tax attorney Patrick Thomas, Frost Brown Todd, LLP, January 22, 2024.

109 Letter from Low Income Taxpayer Clinics, Legal Aid of Arkansas, to Senator Bob Casey, Chairman, Senate Special Committee on Aging, March 8, 2024; Letter from Legal Services of Northern Virginia to Senator Bob Casey, Chairman, Senate Special Committee on Aging, March 5, 2024. See Appendix 2 for full letters.

110 See Arjun's story; "Ponzi Scheme Questions and Answers," Internal Revenue Service, last updated March 17, 2022, https://www.irs.gov/newsroom/ponzi-scheme-questions-and-answers; "Examination of returns and claims for refund, credit or abatement; determination of correct tax liability," Revenue Procedure 2009-20, https://www.irs.gov/pub/irs-drop/rp-09-20.pdf.

111 *Supra*, note 94.

112 For example, *supra*, note 94; *supra*, note 93.

113 Letter from Legal Action of Wisconsin to Senator Bob Casey, Chairman, Senate Special Committee on Aging, February 20, 2024. See Appendix 2 for full letter.

114 *Id.*

115 *Supra*, note 89.

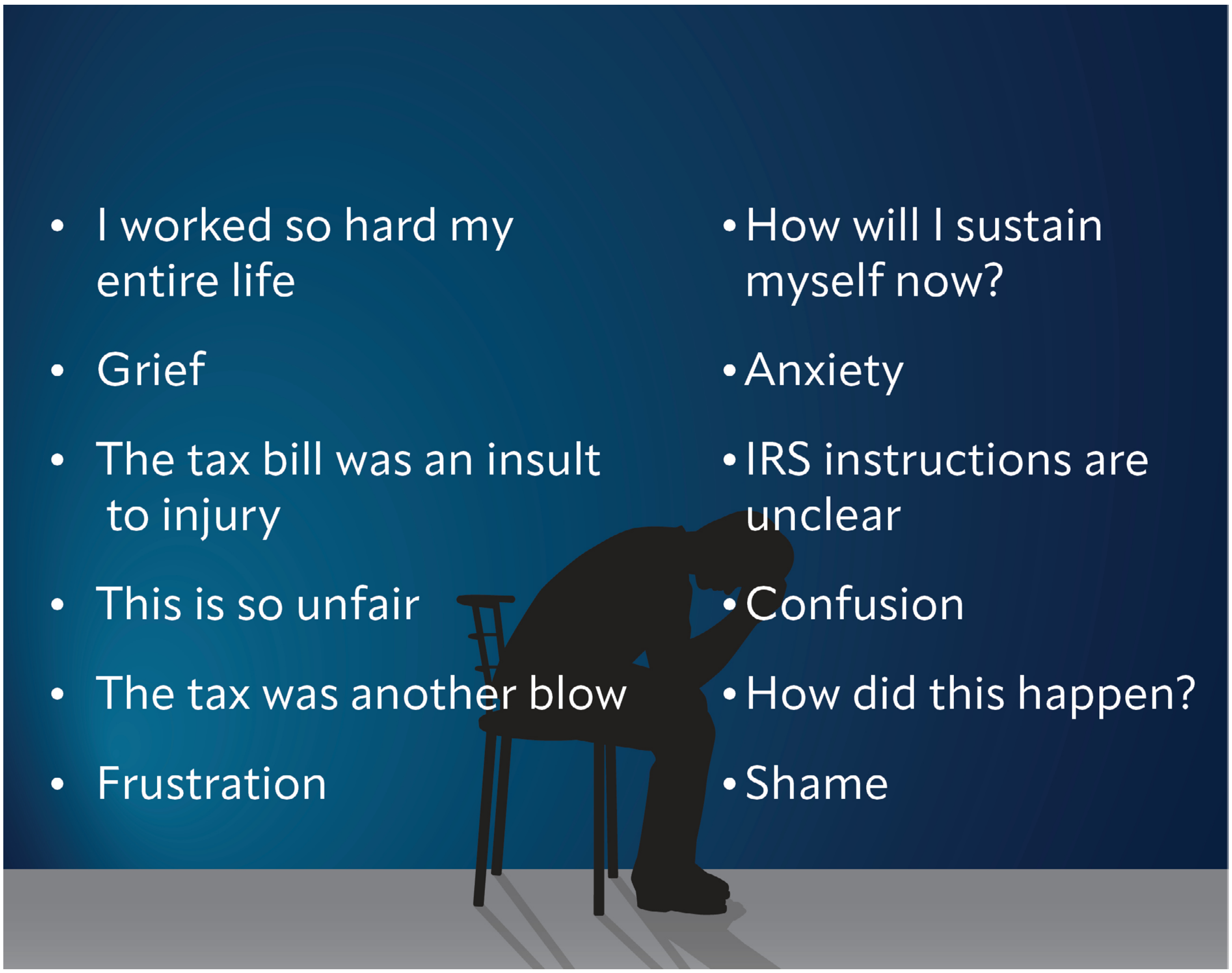
116 For example, see Suzanne and Dennis, Rohan, and Sally and Bill's stories.

117 For example, see Robert and Sally and Bill's stories.

118 For example, see Sally and Bill's story; *supra*, note 95.

help if their calls were returned at all.[119] Many were frustrated by the either slow or absent response by the government or financial institutions.[120] In two cases, scam victims who were also immigrants were tricked into believing that they would lose their U.S. citizenship or be deported if they did not comply with the scammers' requests.[121]

Figure 5. Common Emotions and Thoughts Among Scam Victims



119 For example, see Helen's story; *supra*, note 86.

120 For example, see Helen, Rohan, and Arjun's stories.

121 See Rohan's story; Letter from Legal Aid of Southeast and Central Ohio, to Senator Bob Casey, Chairman, Senate Special Committee on Aging, March 7, 2024. See Appendix 2 for full letter.

Recent news reports echo these narratives, including stories featured in a recent series by the *Washington Post.* These articles shed light on the consequences of the 2017 tax law, highlighting the experiences of older adults who have found themselves facing large federal tax bills after having money stolen by fraudsters.[122] One of these articles included the experience of a former White House scientist, who lost $655,000 to a tech scam and paid more than $100,000 in federal taxes.[123] In another story, a Virginia man told *CBS News* that he lost more than $800,000 to an online scam, which led to a roughly $200,000 tax bill.[124]

122 Michael Laris, "How Congress Leaned on Crime Victims to Pay for Trump-era Tax Cuts," *Washington Post*, December 14, 2023, https://www.washingtonpost.com/dc-md-va/2023/12/14/congress-crime-victims-2017-trump-tax-cuts/.

123 Michael Laris, "A Former White House Scientist was Scammed Out of $655,000. Then Came the IRS," *Washington Post*, December 14, 2023, https://www.washingtonpost.com/dc-md-va/2023/12/14/cyber-crime-scams-irs-taxes/.

124 Robert Legare, Jeff Pegues, and Andres Triay, "FBI Warns of Rising Elder Fraud Crime Rates as Scammers Steal Billions in Savings Each Year," *CBS News*, October 6, 2023, https://www.cbsnews.com/news/fbi-warns-elder-fraud-crime-rates-rising-scammers-steal-billions-each-year/.

The Impact of the Tax Cuts and Jobs Act

Despite Republican promises, these stories show that the Tax Cuts and Jobs Act (TCJA) did not deliver for the middle class, while it piled on penalties for those who had responsibly saved for retirement. The Tax Policy Center stated that, "much of the [TCJA] tax cuts flowed mostly to higher-income households or to corporations" rather than lower-income households.[125] And although corporate profits are at record highs following passage of TCJA,[126] U.S. corporate tax revenues have been trending downward over the decades, as the U.S. is collecting fewer revenues from corporations relative to its international peers.[127] The Center for American Progress noted in 2019, "the large corporate tax windfalls have gone mostly toward lining the pockets of already wealthy individuals, and there is little evidence that middle- and working-class families will see real benefits."[128] Another expert analysis in 2022 found that the law's corporate tax cuts increased earnings for corporate executives and high earners but did not impact earnings for the bottom 90 percent of the workforce.[129]

Repeal of the Theft Loss Deduction Harmed Older Adults and Taxpayers with Incomes Under $75,000

Older adults and taxpayers with incomes under $75,000 were at least half of filers using the casualty and theft loss deduction ahead of the modification of the deduction with the TCJA. However, IRS data include only limited demographic information, making it difficult to understand the characteristics—beyond age and income—of taxpayers who used the deduction and identify which Americans were most affected by the change in law.[130]

125 "Briefing Book: What were the economic effects of the Tax Cuts and Jobs Act?" Tax Policy Center, updated January 2024, https://www.taxpolicycenter.org/briefing-book/what-were-economic-effects-tax-cuts-and-jobs-act.

126 Matt Phillips, "Corporate profits popped in Q3, just shy of all-time peak," *Axios*, November 30, 2023, https://www.axios.com/2023/11/30/corporate-profits-q3-2024.

127 "Six Charts that Show How Low Corporate Tax Revenues are in the United States Right Now," Peter G. Peterson Foundation, April 7, 2023, https://pgpf.org/blog/2023/04/six-charts-that-show-how-low-corporate-tax-revenues-are-in-the-united-states-right-now.

128 Galen Hendricks and Seth Hanlon, "The TCJA 2 Years Later: Corporations, Not Workers, Are the Big Winners," Center for American Progress, December 19, 2019, https://www.americanprogress.org/article/tcja-2-years-later-corporations-not-workers-big-winners/.

129 Patrick J. Kennedy et al., "The Efficiency-Equity Tradeoff of the Corporate Income Tax: Evidence from the Tax Cuts and Jobs Act," October 31, 2022, https://economics.yale.edu/sites/default/files/2023-01/The%20Efficiency-Equity%20Tradeoff%20of%20the%20Corporate%20Income%20Tax.pdf.

130 Government Accountability Office, *Tax Equity: Lack of Data Limits Ability to Analyze Effects of Tax Policies on Households by Demographic Characteristics,* (May 2022), at 8, https://www.gao.gov/assets/gao-22-104553.pdf.

Older filers used the casualty and theft loss deduction disproportionately prior to enactment of the Trump tax law.[131] From 2010 to 2017, about half of returns with the deduction were from filers ages 55 or older, according to IRS data.[132] These returns comprised an estimated 44 percent to 59 percent of all returns claiming this deduction over this period.[133]

These data show older filers were negatively affected by the change to the deduction—including the elimination of the theft loss provision—at a time when older Americans are being increasingly targeted and losing more money to frauds and scams. Stakeholders, including those who spoke with Committee staff, are increasingly concerned about the growing number of older scam victims saddled with huge federal tax bills, who no longer have access to the theft loss deduction. For example, in a recent letter of support for legislation that would partially reinstate the theft loss deduction, AARP wrote:

> As victims grapple with the theft of their hard-earned funds, they face an additional trauma: the tax burden related to their losses. The looming tax obligation compounds their distress, forcing them to relive the crime while struggling to meet financial obligations. Consequently, inquiries about tax liabilities have become increasingly common among those seeking assistance from our Helpline fraud specialists and those attending our online support groups, underscoring the urgent need for support and guidance in navigating this complex and distressing ordeal. …legislation [that would partially reinstate the theft loss deduction] will provide some relief to those who have unfortunately already been the targets of criminals.[134]

Michigan State University's Low-Income Tax Clinic Director told the Committee, "The elimination of the theft loss deduction has been catastrophic for many taxpayers. … Through my work in the Clinic I have seen the devastating impact the restriction on the theft loss deduction has on taxpayers, including the elderly."[135]

Taxpayers with incomes under $75,000 are also among those who, prior to the TCJA, most frequently used the deduction. IRS data show that from 2010 to 2017, an estimated 55 to 71 percent of filers that claimed the casualty and theft loss deduction had an adjusted

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131 Aging Committee Majority staff analysis of 2010 to 2017 data. "SOI tax stats – individual income tax returns complete report (publication 1304) – basic tables part 2, Table 2.6: Returns with Itemized Deductions: Sources of Income, Adjustments, Itemized Deductions by Type, Exemptions, and Tax Items, 2010-2017," Internal Revenue Service, last modified February 1, 2024, https://www.irs.gov/statistics/soi-tax-stats-individual-income-tax-returns-complete-report-publication-1304-basic-tables-part-2.

132 *Id.* By contrast, returns from filers ages 55 or older represented only 42 percent of itemized returns overall. Age for joint returns is based on the primary taxpayer's age. Additionally, these data include filers who claimed the deduction and took the standard deduction through the disaster loss expansion. IRS estimates that before 2017, disaster loss claims accounted for 10-30 percent of all casualty and theft loss claims (see methodology for more details).

133 *Id.*

134 Letter from Bill Sweeney, AARP, to Senator Richard Blumenthal, et al., March 7, 2024, https://www.aarp.org/content/dam/aarp/politics/advocacy/2024/03/senate-casualty-loss-deduction-restoration-act.pdf.

135 Letter from Alvin L. Storrs Low-Income Taxpayer Clinic, Michigan State University College of Law, to Senator Bob Casey, Chairman, Senate Special Committee on Aging, March 13, 2024. See Appendix 2 for full letter.

gross income (AGI) below $75,000.[136] These data suggest that pre-TCJA, the deduction helped low- to moderate-income taxpayers in addition to high-income taxpayers who typically benefit from claiming itemized deductions.[137] These data are consistent with feedback from experts and stakeholders, who believe that taxpayers at all income levels were hurt by the elimination of the theft loss deduction. Seven low-income tax clinics from across the country—including in Arkansas, Michigan, New Mexico, Ohio, Wisconsin, and Virginia—told Committee staff that their clients had been affected by the disallowance of the theft loss deduction.[138] For example, Legal Action of Wisconsin reported that the theft loss deduction removal by the TCJA has been "devastating for folks like our low-income, elderly clients."[139] The Community Tax Law Project Executive Director Nancy Rossner, based in Virginia, reported that there are a lot of low-income people facing tax bills on money they have lost to fraud.[140] Villanova University Tax Professor Leslie Book added that "people who lose a lot of money to scams can be of moderate income, they just saved their entire life. These are not the type of people who you would think of as higher income, but they have had a nest egg in a 401(k), other retirement account, or even a brokerage account; not all filers who would have benefited from the deduction are higher income."[141]

136 Aging Committee Majority staff analysis of 2010 to 2017 data. "SOI tax stats – individual income tax returns complete report (publication 1304) – basic tables part 2, Table 2.1: Returns with Itemized Deductions: Sources of Income, Adjustments, Itemized Deductions by Type, Exemptions, and Tax Items, 2010-2017," Internal Revenue Service, last modified February 1, 2024, https://www.irs.gov/statistics/soi-tax-stats-individual-income-tax-returns-complete-report-publication-1304-basic-tables-part-2. Specifically, staff aggregated income categories below $75,000 adjusted gross income, which included cells with small sample sizes and combined income categories. Given these data limitations, IRS advise to use this information with caution. Additionally, these data include filers who claimed the deduction and took the standard deduction through the disaster loss expansion. IRS estimates that before 2017, disaster loss claims accounted for 10-30 percent of all casualty and theft loss claims (see methodology for more details).

137 Taking the casualty and theft loss deduction requires itemizing rather than taking the standard deduction, and lower-income filers tend to be less likely to itemize. Additionally, ahead of the TCJA, the casualty and theft loss deduction was available only for losses exceeding $100 and 10 percent of AGI, meaning that it was only useful for significant losses. Last, the deduction was intended to cover a loss of assets, such as retirement funds, which not everyone has. These points taken together suggest that very low-income filers may have been less likely to use the deduction. Relatedly, all deductions will translate into a higher benefit for higher-income earners, as deductions from taxable income will save more, given their higher marginal tax rate. In other words, a higher-earning taxpayer will have to pay a higher overall rate on income, thus a deduction to their taxable income translates into higher proportional savings.

138 Letter from Legal Aid of Arkansas, Low Income Taxpayer Clinics, to Senator Bob Casey, Chairman, Senate Special Committee on Aging, March 8, 2024; Letter from Alvin L. Storrs Low-Income Taxpayer Clinic, Michigan State University College of Law, to Senator Bob Casey, Chairman, Senate Special Committee on Aging, March 13, 2024; Senate Aging Majority staff conversation with New Mexico Legal Aid, March 11, 2024; Letter from Legal Aid of Southeast and Central Ohio, to Senator Bob Casey, Chairman, Senate Special Committee on Aging, March 7, 2024; Letter from Legal Action of Wisconsin to Senator Bob Casey, Chairman, Senate Special Committee on Aging, February 20, 2024; Letter from Legal Services of Northern Virginia to Senator Bob Casey, Chairman, Senate Special Committee on Aging, March 5, 2024; Senate Aging Majority staff conversation with Nancy Rossner, The Community Tax Law Project, February 2, 2024. See Appendix 2 for full letters.

139 Letter from Legal Action of Wisconsin to Senator Bob Casey, Chairman, Senate Special Committee on Aging, February 20, 2024. See Appendix 2 for full letter.

140 Senate Aging Majority staff conversation with Nancy Rossner, The Community Tax Law Project, February 2, 2024.

141 Senate Aging Majority staff conversation with Leslie Book, Villanova University, January 12, 2024.

Filers Claiming Casualty and Theft Loss Deduction and the Associated Costs Drop After the TCJA

After passage of the Tax Cuts and Jobs Act (TCJA), the number of taxpayers claiming the casualty and theft loss deduction and the associated costs plummeted, as the law significantly curtailed the deduction, foreclosing tax relief options for scam victims and others who experienced other theft and casualty losses outside of federally declared disasters. However, identifying the exact number of filers affected by the TCJA and the associated costs are difficult due to confounding factors. First, among other policy changes, the TCJA raised the standard deduction for tax years 2018 to 2025, which has resulted in fewer filers itemizing their deductions. If the prior version of the casualty and theft loss deduction were in place today, likely fewer taxpayers would use it since the standard deduction has nearly doubled post-TCJA. For instance, if a single filer would have before been able to deduct a $10,000 loss to a scam, they would likely still choose to elect the $13,850 standard deduction in 2023, unless they had other itemized deductions to claim. This bears out in the data: in tax year 2018, 11 percent of filers itemized returns, down from 31 percent the year before, prior to TCJA enactment.[142] Second, the TCJA still allows deductions related to federally declared disasters, and the number of disasters, and victims of disasters, vary each year.

IRS estimates show a sharp decline in the number of taxpayers claiming the casualty and theft loss deduction and the amounts claimed post-TCJA (see figure 6[143]).[144] For example, in 2017, the last year before the TCJA went into effect, IRS estimated about 113,000 filers claimed the casualty or theft loss deduction, the claims of which were estimated to total $2.8 billion.[145] The next year, IRS reported a 78 percent drop in utilization of the deduction,

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142 Aging Committee Majority staff analysis of 2017 to 2018 data. "SOI Tax Stats – Individual Statistical Tables by Size of Adjusted Gross Income, Table 1.2: All Returns: Adjusted Gross Income, Exemptions, Deductions, and Tax Items. Published as: Individual Complete Report (Publication 1304)," Internal Revenue Service, last modified January 31, 2024, https://www.irs.gov/statistics/soi-tax-stats-individual-statistical-tables-by-size-of-adjusted-gross-income.

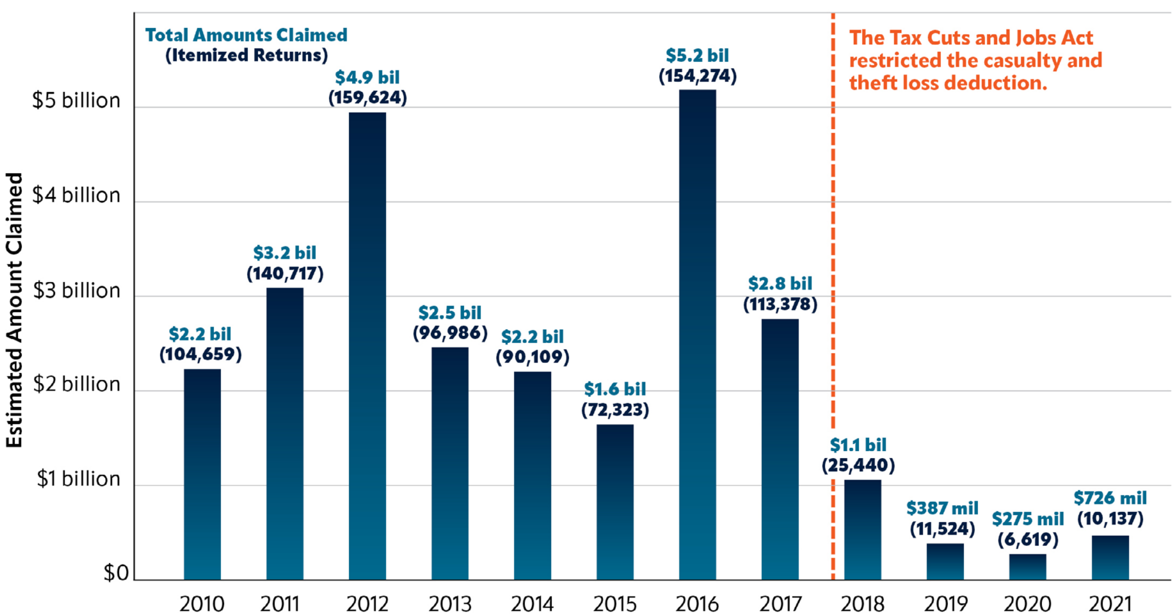
143 "SOI tax stats – individual income tax returns complete report (publication 1304) – basic tables part 2, Table 2.1: Returns with Itemized Deductions: Sources of Income, Adjustments, Itemized Deductions by Type, Exemptions, and Tax Items, 2010-2019," Internal Revenue Service, last modified February 1, 2024, https://www.irs.gov/statistics/soi-tax-stats-individual-income-tax-returns-complete-report-publication-1304-basic-tables-part-2; Letter from Daniel I. Werfel, Commissioner, Internal Revenue Service, Department of the Treasury, to Senator Robert P. Casey, Jr., Chairman, Senate Special Committee on Aging, March 19, 2024 (on file with the Committee).

144 Aging Committee Majority staff analysis of 2010 to 2021 Internal Revenue Service (IRS) data. "SOI tax stats – individual income tax returns complete report (publication 1304) – basic tables part 2, Table 2.1: Returns with Itemized Deductions: Sources of Income, Adjustments, Itemized Deductions by Type, Exemptions, and Tax Items, 2010-2019," Internal Revenue Service, last modified February 1, 2024, https://www.irs.gov/statistics/soi-tax-stats-individual-income-tax-returns-complete-report-publication-1304-basic-tables-part-2; Letter from Daniel I. Werfel, Commissioner, Internal Revenue Service, Department of the Treasury, to Senator Robert P. Casey, Jr., Chairman, Senate Special Committee on Aging, March 19, 2024 (on file with the Committee). These data include filers who claimed the deduction and took the standard deduction through the disaster loss expansion. IRS estimates that before 2017, disaster loss claims accounted for 10-30 percent of all casualty and theft loss claims. IRS casualty and theft loss deduction data may still include claims from taxpayers who took the disaster loss expansion and itemized after 2017 (see methodology for more details).

145 Aging Committee Majority staff analysis of 2017 data. "SOI tax stats – individual income tax returns complete report (publication 1304) – basic tables part 2, Table 2.1: Returns with Itemized Deductions: Sources of Income, Adjustments, Itemized Deductions by Type, Exemptions, and Tax Items, 2017," Internal Revenue Service, last modified February 1, 2024, https://www.irs.gov/statistics/soi-tax-stats-individual-income-tax-returns-complete-report-publication-1304-basic-tables-part-2.

when about 25,000 returns included the deduction.[146] In 2021—the latest year for which data are available—IRS estimated the number of filers claiming this deduction dropped considerably: taxpayers filed about 10,000 returns with this deduction, claiming about $726 million in deductions.[147]

Figure 6. Internal Revenue Service Estimates of Itemized Returns Claiming Casualty or Theft Loss Deduction and Total Amounts Claimed, by Year



Source: Internal Revenue Service Statistics of Income Data

146 Internal Revenue Service, Statistics of Income, Individual Income Tax Returns Complete Report (Publication 1304), 2018, at 24, https://www.irs.gov/pub/irs-prior/p1304--2020.pdf.

147 Letter from Daniel I. Werfel, Commissioner, Internal Revenue Service, Department of the Treasury, to Senator Robert P. Casey, Jr., Chairman, Senate Special Committee on Aging, March 19, 2024 (on file with the Committee).

Ahead of the TCJA, the estimated number of returns to claim the casualty or theft loss deduction fluctuated, ranging from about 72,000 to 160,000 per year between 2010 and 2017.[148] The estimated amount claimed also varied by year, ranging from about $1.6 billion to $5.2 billion over the same period.[149] After the TCJA, from 2018 to 2021, the number of returns claiming the deduction ranged from about 6,700 to 25,000, and the claim amounts ranged from $275 million to $1.1 billion.[150] Based on IRS data, median amounts claimed by filers using the deduction also increased significantly post-TCJA.[151] For example, the median claims from 2014 to 2017 averaged about $11,000.[152] This amount more than doubled to roughly $24,000, when averaging median claims from years 2018 to 2021.[153] Likewise, the average amount claimed by filers using the deduction from 2010 to 2017, per year, ranged from roughly $21,000 to $34,000 but increased from 2018 to 2021, to an approximate range of $34,000 to $72,000.[154] Median and average claim amounts suggest that most filers did not claim six-figure loss deductions.[155] However, IRS data show that

148 Aging Committee Majority staff analysis of 2010 to 2017 data. "SOI tax stats – individual income tax returns complete report (publication 1304) – basic tables part 2, Table 2.1: Returns with Itemized Deductions: Sources of Income, Adjustments, Itemized Deductions by Type, Exemptions, and Tax Items, 2010-2017," Internal Revenue Service, last modified February 1, 2024, https://www.irs.gov/statistics/soi-tax-stats-individual-income-tax-returns-complete-report-publication-1304-basic-tables-part-2. These data include filers who claimed the deduction and took the standard deduction through the disaster loss expansion. IRS estimates that before 2017, disaster loss claims accounted for 10-30 percent of all casualty and theft loss claims (see methodology for more details).

149 *Id.*

150 Aging Committee Majority staff analysis of 2018-2021 data. "SOI tax stats – individual income tax returns complete report (publication 1304) – basic tables part 2, Table 2.1: Returns with Itemized Deductions: Sources of Income, Adjustments, Itemized Deductions by Type, Exemptions, and Tax Items, 2018-2019," Internal Revenue Service, last modified February 1, 2024, https://www.irs.gov/statistics/soi-tax-stats-individual-income-tax-returns-complete-report-publication-1304-basic-tables-part-2; Letter from Daniel I. Werfel, Commissioner, Internal Revenue Service, Department of the Treasury, to Senator Robert P. Casey, Jr., Chairman, Senate Special Committee on Aging, March 19, 2024 (on file with the Committee). IRS casualty and theft loss deduction data may still include claims from taxpayers who took the disaster loss expansion and itemized after 2017 (see methodology for more details).

151 Aging Committee Majority staff analysis of Internal Revenue Service data. Letter from Thomas A. Barthold, Chief of Staff, Joint Committee on Taxation, to Senator Bob Casey, Chairman, Senate Special Committee on Aging, February 26, 2024 (on file with the Committee).

152 *Id.*

153 *Id.*

154 Aging Committee Majority staff analysis of Internal Revenue Service data. "SOI tax stats – individual income tax returns complete report (publication 1304) – basic tables part 2, Table 2.1: Returns with Itemized Deductions: Sources of Income, Adjustments, Itemized Deductions by Type, Exemptions, and Tax Items, 2010-2019," Internal Revenue Service, last modified February 1, 2024, https://www.irs.gov/statistics/soi-tax-stats-individual-income-tax-returns-complete-report-publication-1304-basic-tables-part-2; Letter from Daniel I. Werfel, Commissioner, Internal Revenue Service, Department of the Treasury, to Senator Robert P. Casey, Jr., Chairman, Senate Special Committee on Aging, March 19, 2024 (on file with the Committee).

155 Aging Committee Majority staff analysis of Internal Revenue Service data. "SOI tax stats – individual income tax returns complete report (publication 1304) – basic tables part 2, Table 2.1: Returns with Itemized Deductions: Sources of Income, Adjustments, Itemized Deductions by Type, Exemptions, and Tax Items, 2010-2019," Internal Revenue Service, last modified February 1, 2024, https://www.irs.gov/statistics/soi-tax-stats-individual-income-tax-returns-complete-report-publication-1304-basic-tables-part-2; Letter from Daniel I. Werfel, Commissioner, Internal Revenue Service, Department of the Treasury, to Senator Robert P. Casey, Jr., Chairman, Senate Special Committee on Aging, March 19, 2024 (on file with the Committee); Letter from Thomas A. Barthold, Chief of Staff, Joint Committee on Taxation, to Senator Bob Casey, Chairman, Senate Special Committee on Aging, February 26, 2024 (on file with the Committee).

from 2011 to 2017, between 2,000 and 11,000 filers claimed losses greater than $100,000 each year, though claims at this level dropped after the TCJA (see table 2[156]).[157]

Table 2. Estimates of Itemized Returns that include Casualty or Theft Loss Deductions Claiming $100,000 or more, by Year

Year	Returns
2011	5,000
2012	11,000
2013	4,000
2014	4,000
2015	4,000
2016	10,000
2017	2,000
2018	2,000
2019	1,000
2020	Fewer than 500
2021	2,000

Source: Internal Revenue Service Statistics of Income Data provided by Joint Committee on Taxation

156 Letter from Thomas A. Barthold, Chief of Staff, Joint Committee on Taxation (JCT), to Senator Bob Casey, Chairman, Senate Special Committee on Aging, February 26, 2024 (on file with the Committee). According to JCT, the number of observed returns with deductible losses is relatively small and is thus highly subject to sampling error. Additionally, these data include filers who claimed the deduction and took the standard deduction through the disaster loss expansion. IRS estimates that before 2017, disaster loss claims accounted for 10-30 percent of all casualty and theft loss claims. IRS casualty and theft loss deduction data may still include claims from taxpayers who took the disaster loss expansion and itemized after 2017 (see methodology for more details).

157 *Id.*

Similarly, state-level IRS data generally show a drop in utilization of the deduction across states post-TCJA.[158] For example, in Pennsylvania,[159] ahead of the TCJA implementation from 2010 to 2017, Pennsylvanians' individual casualty and theft loss deduction utilization ranged from about 2,000 to 7,000 claims yearly.[160] After the TCJA, usage of the deduction dropped significantly: only 160 filers claimed the deduction in 2018, and 2020 saw the lowest utilization at 60 claims.[161] Across states, the number of Pennsylvania returns claiming the deduction mostly ranked in the top quintile or quartile of all states and Washington, D.C. from 2010 to 2017 (Pennsylvania's ranking ranged from 6 to 13).[162] After the TCJA, Pennsylvanians' utilization dropped to 18th out of 46 states and Washington, D.C. in 2018 (certain states were suppressed).[163]

JCT cost estimates are consistent with IRS data, projecting a drop in the cost of the deduction post-TCJA. JCT estimated that limiting this deduction to federally declared disasters—in addition to economic forecasts and the broader policy changes resulting from passage of the TCJA—would have reduced this tax expenditure by roughly $200 million annually in 2018 and 2019, and about $300 million in 2020.[164] JCT estimates projected costs from casualty and theft losses at $100 million each year from 2022 to 2025, and $500 million in 2026,[165] after the TCJA restrictions on the deduction are set to expire.

158 Aging Committee Majority staff analysis of Internal Revenue Service data. Letter from Daniel I. Werfel, Commissioner, Internal Revenue Service, Department of the Treasury, to Senator Robert P. Casey, Jr., Chairman, Senate Special Committee on Aging, March 19, 2024 (on file with the Committee). These data include filers who claimed the deduction and took the standard deduction through the disaster loss expansion. IRS estimates that before 2017, disaster loss claims accounted for 10-30 percent of all casualty and theft loss claims. IRS casualty and theft loss deduction data may still include claims from taxpayers who took the disaster loss expansion and itemized after 2017 (see methodology for more details).

159 In Pennsylvania, consumers lost more than $224 million to fraud in 2023, a nearly 30 percent increase over 2022, according to Federal Trade Commission data. FBI ranked Pennsylvania 8th among states for number of scam victims 60 and older in 2022, which totaled $80,250,000 in losses. "FTC Consumer Sentinel Network: Imposter Scams," Federal Trade Commission, data were last updated February 8, 2024, https://public.tableau.com/app/profile/federal.trade.commission/viz/FraudReports/FraudFacts; Federal Bureau of Investigation Internet Crime Complaint Center, 2022 Elder Fraud Report, (April 2023), at 10, https://www.ic3.gov/Media/PDF/AnnualReport/2022_IC3ElderFraudReport.pdf.

160 Aging Committee Majority staff analysis of Internal Revenue Service data. Letter from Daniel I. Werfel, Commissioner, Internal Revenue Service, Department of the Treasury, to Senator Robert P. Casey, Jr., Chairman, Senate Special Committee on Aging, March 19, 2024 (on file with the Committee).

161 *Id.*

162 *Id.*

163 *Id.*

164 Aging Committee Majority staff analysis of Joint Committee on Taxation data. Joint Committee on Taxation, *Estimates of Federal Tax Expenditures for Fiscal Years 2016-2020*, (January 30, 2017), at 39, https://www.jct.gov/getattachment/8c914336-1937-4c08-b002-c896fc5e8720/x-3-17-4971.pdf; Joint Committee on Taxation, *Estimates of Federal Tax Expenditures for Fiscal Years 2017-2021*, (March 25, 2018), at 43, https://www.jct.gov/getattachment/f24167b5-d91e-4e37-83f5-f6775c23861b/x-34-18-5095.pdf.

165 Joint Committee on Taxation, *Estimates of Federal Tax Expenditures for Fiscal Years 2022-2026*, (December 22, 2022), at 42, https://www.jct.gov/getattachment/46c5da1a-424b-4a6f-bf6e-e076845b168d/x-22-22.pdf.

Conclusion

The Republican-led Tax Cuts and Jobs Act (TCJA) dramatically narrowed the casualty and theft loss deduction by limiting it to losses from federally declared disasters. This change was used by Republicans to help pay for tax breaks for the wealthiest Americans and big corporations. As a result, American fraud victims are routinely scammed, then taxed. Those victims, including too many older adults, are subject to federal tax bills that can total hundreds of thousands of dollars after already suffering devastating theft losses.

Older Americans are prime targets for scammers, in part because many seniors have worked hard their whole lives to save enough funds to ensure a safe and secure retirement. As such, hundreds of thousands of older Americans fall victim to fraud and scams each year, losing billions to these schemes—and this is almost surely an undercount. As losses from fraud and scams are increasing and the types of schemes are becoming more complex and convincing, victims of fraud deserve more avenues to offset their losses. Those older adults should not be further punished by having to pay taxes on their losses.

Senator Casey supports reinstating the casualty and theft loss deduction through passage of the Tax Relief for Victims of Crimes, Scams, and Disasters Act. This legislation would also allow scam victims and others who have experienced theft and casualty losses outside of federally declared disasters since passage of the TCJA to amend their tax returns to claim the deduction.

In addition to the modification of the casualty and theft loss deduction, other TCJA individual provisions are set to expire in 2025. As legislators consider potential changes to the broader tax system and other areas of law, Senator Casey will continue to advance the following priorities in Congress:

1. Supporting individuals and families who experience difficult or traumatic events by assisting them in obtaining federal support and relief,

2. Ensuring federal agencies have the resources and funding they need to crack down on scammers and increase awareness of their deceptive practices,

3. Putting more money in the pockets of working families by lowering costs and making the tax code work for them, and

4. Making sure that the wealthiest Americans and corporations are not treated better by our tax code than lower- and middle-class Americans.

The Tax Cuts and Jobs Act has enriched wealthy Americans and large corporations while supercharging the federal deficit and hurting many hard-working Americans, including those featured in this report. Going forward Congress needs to reverse many of the policy changes made in 2017 with these principles in mind.

Appendix 1: Letters Related to the Investigation

ROBERT P. CASEY, JR., PENNSYLVANIA, CHAIRMAN

KIRSTEN E. GILLIBRAND, NEW YORK
RICHARD BLUMENTHAL, CONNECTICUT
ELIZABETH WARREN, MASSACHUSETTS
MARK KELLY, ARIZONA
RAPHAEL WARNOCK, GEORGIA
JOHN FETTERMAN, PENNSYLVANIA

MIKE BRAUN, INDIANA, RANKING MEMBER

TIM SCOTT, SOUTH CAROLINA
MARCO RUBIO, FLORIDA
RICK SCOTT, FLORIDA
J.D. VANCE, OHIO
PETE RICKETTS, NEBRASKA

United States Senate

SPECIAL COMMITTEE ON AGING
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December 19, 2023

The Honorable Daniel Werfel
Commissioner
Internal Revenue Service
U.S. Department of the Treasury
1111 Constitution Avenue, NW
Washington, D.C. 20224

Dear Commissioner Werfel:

In recent months, I have been investigating how the 2017 tax overhaul championed by Congressional Republicans has negatively affected victims of scams, fraud, and theft, including older adults. The Republican tax law eliminated a provision of the tax code that allowed victims of fraud to claim a deduction on stolen funds—a provision that was on the books for a century. Following the removal of this provision,[1] older adults and their families from across the Nation have faced the shock and financial burden of enormous federal tax bills after having their life savings drained by thieves and fraudsters. This issue is particularly concerning as older adults appear to have disproportionately used the theft deduction before its elimination. Given the growing number of fraud schemes affecting older adults, I write seeking additional information about the effects of 2017 Republican tax law that are negatively affecting older adults in Pennsylvania and across our Nation.

Theft was codified into the casualty losses deduction shortly after individual income taxes were established in 1913, so that taxpayers suffering casualty or theft losses would not have to pay taxes on that lost income. By 1980, 10 percent of itemized returns included the casualty and theft losses deduction. Though changes to the tax code since the 1980s reduced the number of filers using the deduction,[2] an average of 116,500 filers used the deduction annually from 2010 to 2017, according to Internal Revenue Service data.[3] About half of filers using this deduction were age 55 or older during that same period.[4] In 2017, the Republican-led Tax Cuts and Jobs Act (TCJA) dramatically narrowed the deduction by limiting it to losses from federally declared disasters, a change that was meant help offset the cost of tax breaks for multinational corporations and the ultra-wealthy. As a result, fraud victims have found themselves subject to

[1] Tax Cuts and Jobs Act, P.L. 115-97. *See* SEC. 11044. Modification of Deduction for Personal Casualty Losses.

[2] Senate Committee on the Budget, *Tax Expenditures: Compendium of Background Material on Individual Provisions*, Prepared by the Congressional Research Service, 117th Congress, December 2022, at 1040, https://www.congress.gov/117/cprt/SPRT49569/CPRT-117SPRT49569.pdf.

[3] Analysis by Committee staff of Internal Revenue Service, Statistics of Income, Individual Income Tax Returns Complete Report (Publication 1304), Table 2.1.

[4] Analysis by Committee staff of Internal Revenue Service, Statistics of Income, Individual Income Tax Returns Complete Report (Publication 1304), Table 2.6.

large federal tax bills that can total hundreds of thousands of dollars after suffering large theft losses.

The *Washington Post* was the latest news outlet to shed light on the negative consequences of the 2017 change in the tax code, highlighting the experiences of older adults who have found themselves on the hook for large federal tax bills after having money stolen by fraudsters.[5] Earlier this year, *Forbes* highlighted the case of a Florida couple who was scammed by their daughter out of more than $1 million—money the IRS treated as income—resulting in a $400,000 tax bill.[6] In another instance, a Virginia man told *CBS News* that he lost more than $800,000 to an online scam, which led to a tax bill of $200,000.[7]

As losses from frauds and scams are increasing and the types of schemes are evolving, victims of fraud deserve more avenues to recover their losses. In November, I convened a hearing to highlight how scams augmented by artificial intelligence can easily dupe consumers and businesses into giving away valuable personal information or money.[8] Federal Trade Commission (FTC) data show that consumers reported 2.5 million fraud events in 2022, losing $9 billion[9]—up from $6.1 billion the prior year.[10] Older adults reported losing more than $1.6 billion to fraud in 2022, though FTC estimates actual losses are as high as $48 billion. Older adults also experienced higher average losses than younger consumers in 2022.[11]

The Special Committee on Aging is charged with examining "all matters pertaining to problems and opportunities of older people, including, but not limited to, problems and opportunities of … assuring adequate income."[12] Given the significant impact that frauds and scams are having on older adults, and the substantial negative financial effect that the 2017 tax law appears to be having on fraud victims, I request that you provide the following information no later than January 18, 2023:

1. Recent reporting confirms that older adults have faced significant tax liabilities following the change to the casualty and theft losses deduction that was instituted in the 2017 tax

[5] Michael Laris, "How Congress Leaned on Crime Victims to Pay for Trump-era Tax Cuts," *Washington Post*, December 14, 2023, https://www.washingtonpost.com/dc-md-va/2023/12/14/congress-crime-victims-2017-trump-tax-cuts/; Michael Laris, "A Former White House Scientist was Scammed Out of $655,000. Then Came the IRS," *Washington Post*, December 14, 2023, https://www.washingtonpost.com/dc-md-va/2023/12/14/cyber-crime-scams-irs-taxes/.

[6] Kelly Phillips Erb, "Taxpayers Are Liable for Taxes on $1.2 Million – Even if Their Daughter Stole It," *Forbes*, July 19, 2023, https://www.forbes.com/sites/kellyphillipserb/2023/07/19/taxpayers-are-liable-for-taxes-on-12-million-even-if-their-daughter-stole-it/?sh=139f421261ec.

[7] Robert Legare, Jeff Pegues, and Andres Triay, "FBI Warns of Rising Elder Fraud Crime Rates as Scammers Steal Billions in Savings Each Year," *CBS News*, October 6, 2023, https://www.cbsnews.com/news/fbi-warns-elder-fraud-crime-rates-rising-scammers-steal-billions-each-year/.

[8] *Modern Scams: How Scammers Are Using Artificial Intelligence & How We Can Fight Back, Before the Senate Special Committee on Aging,* 118th Congress, 2023, https://www.aging.senate.gov/hearings/modern-scams-how-scammers-are-using-artificial-intelligence-and-how-we-can-fight-back.

[9] Federal Trade Commission, *Protecting Older Consumers 2022-2023*, October 18, 2023, at 25, https://www.ftc.gov/system/files/ftc_gov/pdf/p144400olderadultsreportoct2023.pdf.

[10] *Id.* at 27.

[11] *Id.* at 25-26.

[12] "Rules: United States Senate Special Committee on Aging," Senate Special Committee on Aging, last accessed December 18, 2023, https://www.aging.senate.gov/about/rules.

law. Some people who have been defrauded have ended up with hefty tax bills after suffering large theft losses, which has put them in challenging financial positions.

a. Please provide any available data regarding the number of taxpayers who have contacted the IRS about this issue, such as through the Taxpayer Assistance Centers, help lines, and the Offer in Compromise program.

b. Has IRS been documenting how the change to the tax code's casualty and theft losses deduction is affecting taxpayers? For example, is IRS tracking the number of taxpayers who are no longer able to take the deduction for money lost to frauds and scams?

2. Does the IRS have any initiatives or campaigns specifically related to fraud, theft, or scams targeting older adults? Does the IRS have tax guidance for taxpayers who fall victim to financial fraud schemes? If so, please provide all documents related to these efforts, and describe the agency's strategy to assist taxpayers who have experienced theft, scams, or fraud.

3. Following passage of the 2017 tax law, IRS data show a sharp decline in the number of taxpayers claiming the casualty and theft losses deduction, as well as the amount of money taxpayers claimed. For example, IRS data from 2019 show the number of filers claiming the deduction dropped to about 11,500 returns, estimated at $387 million in total claims.[13] In 2017, the last year before TCJA went into effect, about 113,000 returns included it, totaling an estimated $2.8 billion in claims.[14]

a. To the extent that IRS has additional data about the number of filers using the deduction and the amount claimed for tax years 2020-2022, please provide it.

b. What, if any, information can the IRS provide about the reasons for the declining use of the deduction following the 2017 change in the tax code? What, if any, data do the IRS have regarding the reason that taxpayers claimed the deduction prior to the 2017 change to the tax code? Does the IRS have visibility into whether filers were using the deduction in response to theft, disaster, or some other event? To the extent IRS has such data, please provide it to the Committee.

c. Please provide a state-by-state breakdown of the number of taxpayers using the deduction, and the amount claimed, for each available year dating back to 2010.

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[13] "Table 2.1. Returns with Itemized Deductions: Sources of Income, Adjustments, Itemized Deductions by Type, Exemptions, and Tax Items, by Size of Adjusted Gross Income, Tax Year 2019 (Filing Year 2020)," Internal Revenue Service, last accessed December 18, 2023, https://www.irs.gov/pub/irs-soi/19in21id.xls.

[14] "Table 2.1. Returns with Itemized Deductions: Sources of Income, Adjustments, Itemized Deduction by Type, Exemptions, and Tax Items, by Size of Adjusted Gross Income, Tax Year 2017 (Filing Year 2018)," Internal Revenue Service, last accessed December 18, 2023, https://www.irs.gov/pub/irs-soi/17in21id.xls.

d. Please provide any available IRS data that include the median amounts and amounts at quartiles that filers have deducted as casualty/theft losses.

If you or your staff have any questions about this request, please direct them to Peter Gartrell, chief investigator for the Majority staff, at 202-224-5364.

Thank you for your assistance with this request.

Sincerely,

Bob Casey

Robert P. Casey, Jr.
United States Senator
Chairman, Special Committee
on Aging

Letter to Joint Committee on Taxation

United States Senate
SPECIAL COMMITTEE ON AGING
WASHINGTON, DC 20510-6400
(202) 224-5364

January 17, 2024

Thomas A. Barthold
Chief of Staff
Joint Committee on Taxation
502 Ford House Office Building
Washington, DC 20515

Dear Mr. Barthold:

In recent months, I have been investigating how the 2017 Tax Cuts and Jobs Act (TCJA) has negatively affected victims of scams, fraud, and theft, including older adults. The Republican tax law eliminated a provision of the tax code that allowed victims of fraud to claim a deduction on stolen funds—a provision that was on the books for a century. Following the removal of this provision,[1] older adults and their families from across the Nation have faced the shock and financial burden of enormous federal tax bills after having their life savings drained by thieves and fraudsters. This issue is particularly concerning as older adults appear to have disproportionately used the theft deduction before its elimination. Given the growing number of fraud schemes affecting older adults, I write seeking assistance in accessing tax estimates related to this deduction, to better understand the effects of TCJA.

Theft was codified into the casualty losses deduction shortly after individual income taxes were established in 1913, so that taxpayers suffering casualty or theft losses would not have to pay taxes on that lost income. Though changes to the tax code since the 1980s reduced the number of filers using the deduction,[2] an average of 116,500 filers used the deduction annually from 2010 to 2017, according to Internal Revenue Service data.[3] About half of filers using this deduction were age 55 or older during that same period.[4] In 2017, the TCJA dramatically narrowed the deduction by limiting it to losses from federally declared disasters, a change that was meant help offset the cost of tax breaks for multinational corporations and the ultra-wealthy. As a result, fraud victims have found themselves subject to large federal tax bills that can total hundreds of thousands of dollars after suffering large theft losses.

[1] Tax Cuts and Jobs Act, P.L. 115-97. *See* SEC. 11044. Modification of Deduction for Personal Casualty Losses.

[2] Senate Committee on the Budget, *Tax Expenditures: Compendium of Background Material on Individual Provisions*, Prepared by the Congressional Research Service, 117th Congress, December 2022, at 1040, https://www.congress.gov/117/cprt/SPRT49569/CPRT-117SPRT49569.pdf.

[3] Analysis by Committee staff of Internal Revenue Service, Statistics of Income, Individual Income Tax Returns Complete Report (Publication 1304), Table 2.1.

[4] Analysis by Committee staff of Internal Revenue Service, Statistics of Income, Individual Income Tax Returns Complete Report (Publication 1304), Table 2.6.

Web Site: http://aging.senate.gov

The Special Committee on Aging is charged with examining "all matters pertaining to problems and opportunities of older people, including, but not limited to, problems and opportunities of … assuring adequate income."[5] As Chair of the Special Committee on Aging, and a member of the Senate Committee on Finance, I am concerned about the significant impact that frauds and scams are having on older adults, and the substantial negative financial effect that the 2017 tax law appears to be having on fraud victims. I therefore request your assistance in providing the following information, as Committee staff discussed with JCT staff during a meeting on January 8, 2024:

1. Please provide data on the number of taxpayers who claimed the casualty and theft losses deduction for each year from 2011-2021. Specifically, please provide the quintile and quartile distributions of the amount claimed, as well as the median amount claimed. Please also provide tables that cross-reference these data with:

    i. the age of the taxpayers who claimed this deduction, using the following age ranges: under 34; 35-44; 45-54; 55-64; and 65+; and

    ii. adjusted gross income (AGI) of the taxpayers who claimed this deduction.

2. Please provide data on the number of taxpayers who used the casualty and theft losses deduction, claiming $100,000 or more, for each year from 2011-2021.

3. Regarding taxpayer income, AGI may be affected by retirement account withdrawals not consistent with filers' actual annual incomes. Please provide available data on sources of income, including retirement income.

I ask that you please provide the requested data by January 31, 2024. I further request that your staff alert my staff to any additional categories of data that the Joint Committee on Taxation can provide that may be of assistance in this investigation.

If you or your staff have any questions about this request, please direct them to Layla Moughari, GAO Detailee, at 202-224-5364.

Thank you for your assistance with this request.

Sincerely,

Bob Casey

Robert P. Casey, Jr.
United States Senator
Chairman, Special Committee on Aging

[5] "Rules: United States Senate Special Committee on Aging," Senate Special Committee on Aging, last accessed December 18, 2023, https://www.aging.senate.gov/about/rules.

Appendix 2: Letters from Subject-Matter Experts, Stakeholders, and Low-Income Tax Clinics

Letters from Subject-Matter Experts and other Stakeholders

(1) Patrick Thomas, Senior Associate, Frost Brown Todd

Patrick W. Thomas
Senior Associate
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pthomas@fbtlaw.com

February 12, 2024

Senator Bob Casey, Jr.
U.S. Senate Special Committee on Aging
G-16 Dirksen Senate Office Building
Washington, DC 20510

Re: **The Tax Cuts and Jobs Act's Restriction of Theft Loss Deductions under I.R.C. § 165 and its Impact on Older Americans**

Dear Senator Casey,

Thank you for the opportunity to provide comments regarding the impact of the Tax Cuts and Jobs Act's ("TCJA") disallowance of certain theft loss deductions on older Americans. I am an attorney at Frost Brown Todd, LLP, where I primarily represent clients in federal and state tax controversies. I represent taxpayers throughout the country but focus primarily on our firm's core service areas in Indiana, Kentucky, Pennsylvania, Tennessee, Ohio, and West Virginia. Prior to my work at Frost Brown Todd, I directed a federally funded Low-Income Taxpayer Clinic at the Notre Dame Law School in South Bend, Indiana, where I supervised law students in representing low-income taxpayers with a variety of tax disputes with the IRS.

Additionally, I serve as a Vice-Chair on the American Bar Association ("ABA") Section of Taxation's Individual and Family Taxation Committee ("IFT Committee"), which focused on this very issue in our recent meeting in January 2024. As supplemental material, I have enclosed a slide deck from that meeting's panel presentation on this topic.

These comments are made in my individual capacity, and do not represent the official position of Frost Brown Todd, the ABA, or the IFT Committee. Further, I have not and will not receive any remuneration from any client for the preparation of these comments. The examples related below stem directly from the experiences my clients have encountered, with some hypotheticals to demonstrate the effect of current law under various circumstances.

Scope of the Problem

Over the past year, I have encountered numerous clients—some quite elderly but all 55 years of age and older—who have fallen victim to scams (or who have been scammed and are now *realizing* that the arrangement was a scam). Following a robust online discussion among tax practitioners who have also encountered similar facts, it appeared to me that this problem was increasing in occurrence and severity.

Indeed, the data bear this out. According to the FBI's 2022 Internet Crime Report, total complaints submitted to the FBI's Internet Crime Complaint Center ("IC3") jumped from approximately 350,000 in 2018 to 800,000 in 2022—a 228% increase over just four years. Moreover, complainants reported $2.7 billion lost to Internet crime in 2018, compared with $10.3 billion in 2022—an increase of 381%.[1] Of course, the stigma that being a scam victim involves, as I have encountered among my clients, may contribute to underreporting of these claims.

Scammers use several deceitful tactics to part elderly Americans from their hard-earned money. These include (1) investment scams (i.e., Ponzi schemes and other scams promising profits), (2) tech support scams (e.g., pretending that payment is needed to protect a computer from viruses), (3) confidence/romance scams (e.g., feigning a romantic relationship and asking for payments for family support or travel to meet the victim), or even (4) government impersonation, among others.[2] Critically, as discussed later, this "hook" for the scam is, post-TCJA, determinative of whether taxpayers can still deduct scam losses. Further, no matter the type of scam, according to the IC3's 2022 Elder Fraud Report, cryptocurrency is becoming the "preferred payment method" for scams.[3] In 2022, numerous forms of fraud were accelerated by the easy movement of cryptocurrency.[4]

Victims may liquidate a variety of assets to ultimately transfer the assets to the scammer: tax-deferred retirement accounts (IRA, 401(k) etc.), post-tax retirement accounts (Roth IRAs, Designated Roth Accounts), taxable brokerage accounts, real estate, or even simply a checking/savings account. Each account type creates different tax impacts in the context of a scam; in my experience, IRAs and 401(k)s are the accounts that are most often liquidated, given their disproportionately higher value compared with other assets of the victim.

Legal Analysis & Impact on Taxpayers

Inclusion of the Initial Distribution in Income

The most basic principle of federal income taxation is that taxable income includes "all income from whatever source derived."[5] Generally, the **use** of the funds does not matter for purposes of including the funds in income.[6] Therefore, to the extent that a victim liquidates a

[1] Federal Bureau of Investigation, Internet Crime Report 2022, p. 7, *available at* https://www.ic3.gov/Media/PDF/AnnualReport/2022_IC3Report.pdf.

[2] Federal Bureau of Investigation, Elder Fraud Report 2022, p. 6 *available at* https://www.ic3.gov/Media/PDF/AnnualReport/2022_IC3ElderFraudReport.pdf.

[3] *Id.* at 15.

[4] Victims over 60 years old reported more than $1 billion in internet crimes involving cryptocurrency, up 350% from 2021. *Id. See also* Michael Laris, *A Former White House Scientist was Scammed out of $655,000. Then Came the IRS*, THE WASHINGTON POST (Dec. 14, 2023) https://www.washingtonpost.com/dc-md-va/2023/12/14/cyber-crime-scams-irs-taxes/.

[5] *See* I.R.C. § 61; Commissioner v. Glenshaw Glass, 348 U.S. 426 (1955).

[6] A potential exception exists where the taxpayer does not have "dominion or control" over the funds. *See* Balint v. Commissioner, T.C. Memo. 2023-118. This exception, however, will not apply to most scam cases because the victim retains the choice to transfer the funds to the scammer post-liquidation. Further, the

taxable or tax deferred account, she must generally include the distribution in income. Further, under I.R.C. § 72(t), if the victim is under 59 ½ on the date of distribution, she must generally also pay a 10% penalty on any distribution from a tax-deferred account, such as a 401(k) or IRA. No exception to the 10% penalty exists for victims in this situation. Finally, victims must generally also include this income for state income tax purposes.

Deducting the Scam Loss

I.R.C. § 165(a) allows a deduction for "any loss sustained during the taxable year and not compensated for by insurance or otherwise." But I.R.C. § 165(c) limits this deduction for individuals to (1) losses incurred in a trade or business; (2) losses incurred in any transaction entered into for profit; or (3) losses of property not connected with a trade or business or a transaction entered into for profit, if such losses arise from [a] casualty, or from theft. Congress further limited individual theft and casualty losses under I.R.C. § 165(c)(3) over the years, even before the TCJA. The primary limitation is that under I.R.C. § 165(h)(2), net casualty losses must exceed 10% of a taxpayer's adjusted gross income to be deductible.

In section 11044(a) of the TCJA, Congress removed entirely the ability of individuals to deduct theft losses, unless such loss was "attributable to a Federally declared disaster" for tax years 2018 through 2025. *See* I.R.C. § 165(h)(5). Because no theft loss from a scam is likely "attributable to a Federally declared disaster", such losses are not deductible for individuals under I.R.C. § 165(c)(3) for 2018 through 2025.

Nevertheless, there are *some* remaining avenues for deducting scam losses under I.R.C. § 165(c)(1) or 165(c)(2), which the TCJA did not alter. However, deductibility depends on the ***intent*** of the taxpayer when they send money to the scammer. If the loss was incurred (1) in a trade or business or (2) in a transaction entered into for profit, the deduction remains allowable, even under the TCJA, because those deductions arise under I.R.C. § 165(c)(1) and § 165(c)(2).[7] If the taxpayer sends money for another reason—such as to protect their computer from a "virus" or to support a feigned romantic relationship—the loss is not deductible.

This means that deductibility now turns on whether someone has a ***financial*** motive—either through their business or otherwise—for entering the transaction with the scammer. This leads to profoundly disparate impacts: those that thought they were making a buck by investing with a cryptocurrency "guru" are better positioned than those who fell victim to a romance scam, scare-tactic/tech support scam, or other scam without a profit motive—i.e., those who had altruistic or protective intentions for these payments.[8]

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victim's financial institution is likely to issue a Form 1099 with respect to the liquidation, which will cause the IRS's Automated Underreporter System to issue notices to the victim if they do not report the income on their tax return. *See* Internal Revenue Service, Topic No. 652, Notice of Underrported Income – CP2000, https://www.irs.gov/taxtopics/tc652 (last updated Feb. 9, 2024).

[7] *See* I.R.C. § 165(h)(1) (disallowing "personal casualty losses" for 2018 – 2025), § 165(h)(3)(B) (defining "personal casualty losses" as only those arising under I.R.C. § 165(c)(3)).

[8] The deductions under I.R.C. § 165(c)(1) and (c)(2) are also not subject to the 10% AGI limitations in I.R.C. § 165(h)—but this was also the case pre-TCJA.

Timing of the Deduction

Even if the loss is deductible, the **timing** of the deduction under current law can cause significant hardship. I.R.C. § 165(e) provides that "any loss arising from theft shall be treated as sustained during the taxable year in which the taxpayer **discovers** such loss." Congress had a very good policy rationale when it enacted this subsection in the 1954 Revenue Act: a victim may not discover until years later that she was a theft victim.[9]

For example, consider someone who falls victim to a scam, liquidates $500,000 in her IRA, and transfers those assets to a scammer in 2018. But she does not discover that the arrangement **was** a scam until late 2024. Generally, the statute of limitations on refunds for the 2018 tax year expires on April 15, 2024; if the theft loss arose in 2018, her refund claim would be time barred.[10]

On the other hand, however, this timing rule, combined with the TCJA's elimination of the ability to carry back Net Operating Losses ("NOLs"), has serious consequences on whether a deduction has any benefit for elderly taxpayers.[11] For example, suppose a victim withdraws $500,000 from her 401(k) in late 2021, transfers the funds to a scammer in early 2022, and does not realize that the arrangement is a scam until 2023. This creates the following consequences:

1. The taxpayer must include $500,000 in her gross income in 2021. For a single taxpayer claiming the standard deduction, this results in a tax of approximately $140,000;
2. If the taxpayer is under age 59 and ½ on the date of distribution, she must incur a 10% tax penalty on the distribution ($50,000), also in 2021; this results in a total federal tax due of $190,000.
3. She can first deduct the transfer to the scammer—if at all—in 2022.[12]

Unless the taxpayer has very high income in 2022, she will be unable to utilize the full deduction in that year. Therefore, she would be eligible to claim a NOL carryover in future tax years. Meanwhile, however, she must deal with the $190,000 tax liability for 2021, which may or may not have been covered by appropriate tax withholdings.[13]

However, for elderly taxpayers, this carryover benefit may prove illusory—particularly where elderly taxpayers have increasingly shifted their retirement savings from defined benefit

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9 S. Rep. No. 83-1622, at 23 (1954).

10 *See Id.;* I.R.C. § 6511.

11 Tax Cuts & Jobs Act, P.L. No. 115-97, § 13302(b) (2017). *See also* I.R.C. § 172. Note that Congress did *not* apply the NOL carryback elimination for insurance companies, which forwards a very similar rationale as exists for victims of theft losses, in that such companies pay out claims in subsequent tax years, but receive income (premiums) in earlier years. *See* TCJA § 13302(d). The CARES Act temporarily restored the ability to claim NOL carrybacks, but only for losses arising in 2018, 2019, and 2020.

12 One of my clients, fortunately, liquidated his IRA, transferred funds to the scammer, and realized it was a scam in the same taxable year. But this experience is not typical and can easily cross tax years if the scam begins late in the calendar year.

13 In my experience, scammers often convince taxpayers to have no withholding on such payments.

plans to defined contribution plans such as IRAs and 401(k)s.[14] If a taxpayer liquidates their entire retirement savings in this manner, they are often left with no regular income stream aside from Social Security. If Social Security is a taxpayer's sole source of income, there is often no gross income to offset in future tax years.[15]

In summary then, this taxpayer must deal with a very large tax liability in 2021 and has no ability to apply the benefit of the deduction (if it is allowable at all) to that liability. Indeed, the deduction may have no benefit whatsoever for an elderly taxpayer, given that they likely now only have Social Security income. Ultimately, taxpayers may not even know that the tax impact, or a remedy for it, even exists.

Legislative Solutions

Congress could address these disparities by considering the following changes to current law:

1. Restore the ability to deduct theft losses under I.R.C. § 165(c)(3), without any limitation as to whether the loss occurred in a federally declared disaster area.

2. For scam theft losses in particular, (A) allow taxpayers to claim a loss in the same year as any associated income inclusion event and (B) extend the statutes of limitations under I.R.C. § 6501 and 6511 to allow for such claims.

3. Alternatively, allow NOL carrybacks for theft losses arising under I.R.C. § 165.

4. Create an exception to the 10% penalty on early distributions under I.R.C. § 72(t) for distributions from 401(k), IRA, or other tax deferred accounts that were obtained in furtherance of a scam.

Once again, thank you for the opportunity to provide these comments. Should you or the Committee have any questions, please feel free to contact me at pthomas@fbtlaw.com or (502) 779-8777.

Sincerely,

Patrick W. Thomas

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[14] *See* David Zook, *How do retirement plans for private industry and state and local government workers compare?*, UNITED STATES DEP'T OF LABOR, BUREAU OF LABOR STATISTICS, Beyond the Numbers, Vol. 12, No. 1 (Jan. 2023) https://www.bls.gov/opub/btn/volume-12/how-do-retirement-plans-for-private-industry-and-state-and-local-government-workers-compare.htm.

[15] *See* I.R.C. § 86(a) (generally excluding one-half of Social Security benefits from gross income). A taxpayer's heightened standard deduction often removes any remaining gross income to or below $0.

(2) Deputy District Attorney Scott Pirrello, Head of Elder Abuse Prosecutions, San Diego District Attorney's Office

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COUNTY OF SAN DIEGO

SUMMER STEPHAN
DISTRICT ATTORNEY

DWAIN D. WOODLEY
ASSISTANT DISTRICT ATTORNEY

February 15, 2024

Senator Bob Casey, Chairman
U.S. Senate Special Committee on Aging
393 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Casey,

As a proud Penn State ('98 Business) graduate, it is a special opportunity for me to write you this letter about a topic I have become incredibly passionate about.

According to the 2022 FBI Elder Fraud Report, 88,262 victims in the U.S. over the age of 60 reported they were victims of fraud totaling $3.1 Billion in reported losses. For 2022, the FTC's report "Protecting Older Consumers 2022-2023" concluded that 385,590 victims aged 60 and over reported $1.6 Billion in losses. These data sets represent a tremendous effort by these agencies to account for the "tsunami of elder fraud" that we are faced with every day. However, the data on REPORTED losses is a woeful underrepresentation of the true impact. These estimates do not account for reports made to local law enforcement, local and state Adult Protective Services agencies, and do not account for the overwhelming number of elder fraud victims that do not report their cases at all due to fear, shame, and embarrassment.

The 2022 FTC Report attempts to estimate the ACTUAL losses due to elder fraud for the first time by a Federal Agency involved in this issue and suggests that the real impact of elder fraud to American seniors is $137.4 Billion in losses – all but a fraction of which will never be recovered or returned to our victims. There are 100,000's of reports of elder fraud made each year and less than 1/10th of 1 % of these cases are investigated by any local, state, or federal law enforcement agency. For the countless victims who do have the courage to report their cases they will be told the regrettable answer, "I'm sorry there's nothing that can be done."

My name is Scott Pirrello and I am the Head of Elder Abuse Prosecutions for the San Diego District Attorney's Office. I have been an elder abuse prosecutor for over ten years and am Co-Chair of the California District Attorney's Association's Elder Abuse Committee. Since 2019, I have been working on the development of a groundbreaking task force that targets Elder Scams specifically. At its inception, we decided that as Americans that we had to have a better answer for these victims and that we must be bold to set out and determine what COULD be done instead of the status quo at the time which was an apparent surrender. I am now proud to work alongside members of law enforcement, social workers, and prosecutors who are now counted among the top experts in elder fraud in the country, one of whom testified before your Committee in September 2022.

1

In 2021, under the leadership of San Diego County's elected District Attorney, Summer Stephan, our office worked with the San Diego FBI to launch a first of its kind Elder Justice Task Force to combat the elder fraud impacting our county. While it was previously thought that all the fraudsters were overseas and out of the reach of law enforcement, we have since learned that the scammers abroad depend on very organized networks of money launderers operating here within the United States and there are thousands of criminals within these networks to be investigated and prosecuted so long as resources are made available.

The San Diego FBI Elder Justice Task Force (EJTF) brought together partners including the San Diego County District Attorney's Office, the FBI, Adult Protective Services, the U.S. Department of Justice & our local U.S. Attorney's Office, local law enforcement agencies, and the San Diego Law Enforcement Coordination Fusion Center ("LECC") to work together to connect the dots and turn investigations from local fraud victims into large scale federal investigations and prosecutions. The EJTF is now committed to 1) investigating criminal organizations committing fraud within the United States and holding those perpetrators accountable; 2) working to recover and return funds lost by elder victims wherever possible; 3) tracking data on the amount of fraud impacting the County of San Diego; and 4) educating the community and all our stakeholders about the greatest current threats to prevent the next fraud.

Our EJTF is the only initiative in the nation that is seeing elder scams in real time because we are tracking each and every report of fraud in our county. This constant review of the hundreds of scams "hot off the presses" enables us to be in a leadership position when it comes to identifying new scams and trends and understanding how these transnational criminal organizations are operating against us.

What has been shocking to observe over the last five years is the ability of the scammers to pivot and evolve. They are constantly improving their tactics against us and becoming more effective as time goes in obtaining significantly more funds from each victim. In prior years scammers focused on draining checking and saving bank accounts of our victims. It was common to see victims losing $8,000, $30,000, or $75,000 in this manner as victims were convinced to empty their accounts to send cash, wire funds, or purchase gift cards to send to the scammers.

In the last two years however, we have seen a shocking increase in the number of victims losing their entire life savings and retirement accounts. The scammers are fleecing our victims of their liquid banking assets initially but then pivoting towards victim's investment accounts being held by institutional financial advisors. Looking back to the 2022 data from the FBI and FTC through the lens of our San Diego task force offers a devastating reality. Our data capturing all the reported losses in San Diego reveals that loss amounts for San Diego County have DOUBLED from 2022 to 2023-year end numbers rising from $49 million to a jaw-dropping $96.7 million dollars for 2023. (San Diego County has a population of 3.2 million and is roughly the size of Connecticut). Based on the percentage increases in losses the past several years reported by IC3/FBI and FTC, we expect this trend to absolutely follow when the 2023 publications are released later this year.

The scammers routinely convince our elder victims that they have been “hacked” through their computers and devices and since they’ve been hacked that their financial accounts are all at risk and that they need to transfer all their assets into “safe accounts.” Victims first believe they are talking to Microsoft, Paypal or Facebook tech support but then the first scammer introduces a second scammer who supposedly works for their bank security division or the US Treasury Dept. Victims are told that their longtime trusted financial advisors and/or local bankers are under investigation and in on the hack somehow and cannot be trusted, so victims are taught how to lie to convince their financial institutions to release their long-held funds.

The result of this is that victims are now routinely liquidating investment, 401K, and other retirement accounts to pay the scammers and unknowingly generate a significant amount of INCOME for the assets sold out of these retirement accounts.

Imagine a typical victim – suppose an 80-year-old widow that lost her husband within the past year that has been fleeced of her entire life savings of over a million dollars early in the year. They are ruined both financially and emotionally. They are traumatized and bewildered. They have gone to their local police station, they have contacted the FBI, they have reported to the FTC, and their state’s consumer protection bureaus. The victim is under the false belief that the cavalry is somehow coming to help them. They believe that their cases have been “reported” and that someone is working on finding the bad guys and returning their money. A sad part of my day-to-day job is talking to these victims routinely and giving them the bad news that nobody is actually working on their cases.

As the months go by, they go towards their families trying to figure out if they can afford to stay in their current house, if they need to give up their independence, how they are going to go on without the nest egg they and their spouse had built up their entire lifetime. After a few months most have accepted that their bank and financial institutions will not help them because they are told they withdrew all their funds of their own volition. These victims often need trauma counselling by this point.

As their traumatic year comes to an end, imagine the gut punch this grandmother feels when she receives her 1099 from her financial services company. The 1099 reveals that she has significant realized income due to the liquidation of her accounts. This victim now gets a bill from the IRS for $300,000 in income taxes even though she has been wiped out and has nothing left.

The victim goes to the IRS’ website and unfortunately there are zero resources posted for scam victims. The victim’s next move is often to look up a tax services agencies or law firms that advertise their services to help victims like this and of course need to bill the victim an additional $10,000 – $30,000 to contest the IRS bill.

For the elder victim in these cases, this all feels like scams layered upon scams. Trauma upon trauma. In this great country of ours, we must be able to do more to help these victims. Providing a tax deduction for personal casualty losses including a theft loss deduction from elder scams would be a very small relief to the untold thousands of victims that endure this type of loss and making it retroactive would no doubt help the throngs of victims in recent years who have experienced a similar fate.

This relief could be one step in the right direction in a whole-of-nation approach to stopping this epidemic of elder fraud. We are happy to assist in any way further to explain how this issue is impacting our senior victims and we also welcome the opportunity to discuss further ways that we can help bring this scourge of elder fraud to an end.

We support any defensive remedy like this to help provide support and solutions to help our victims after they have already lost everything. We are of course also forward-looking and passionate about playing offense to take action to actually stop these scams from happening in the first place.

Our office and our partners on the San Diego Elder Justice Task Force have identified the road map to bringing these elder scams to an end and we are happy to share our ideas with the Committee and be of service in any way possible.

Sincerely,

Scott Pirrello
Deputy District Attorney
Head of Elder Abuse Prosecutions
San Diego District Attorney's Office
[redacted]

(3) James Creech, Senior Manager, Baker Tilly

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March 4, 2024

Chairman Bob Casey
U.S. Senate Special Committee on Aging
G-16 Dirksen Senate Office Building
Washington D.C. 20516

Re: The Tax Cut and Jobs Act of 2017 and the Impact of Theft Loss Deduction Limitations on Older Americans

Dear Senator Casey,

Thank you for your interest in the impact of theft loss limitations on American taxpayers. This issue impacts many taxpayers but carries a special burden on older Americans. At Baker Tilly US LLP, which is a top ten public accounting firm, I see the severe impact of the theft loss limitations several times a week. The most troubling part of the theft loss limitation is that for victims of theft it leaves them feeling as if they have been victimized twice: once by the criminals; and then by the United States government which made them pay tax on the stolen income and now will not let them deduct their losses. Prior to the enactment of theft loss limitations there was a deduction available that would have offset much of the tax on the stolen income, rendering the tax consequences of suffering a theft loss less offensive to anyone's sense of fairness.

The views expressed here are not the official position of Baker Tilly but rather my own personal views based upon my experiences in this area. Furthermore, I have not been retained by any client to draft this letter and have not received any compensation.

Scope of the Problem

From my experience, the impact of the theft loss limitation is widespread. There is a proliferation of sophisticated scam artists that operate through digital platforms including dating apps, Facebook and other social medial, as well as more obscure channels such as game applications with chat functions. The opportunities are anywhere there is human-to-human interaction without having to meet in person or firmly establish an identity. While anyone can fall victim to these scams, the criminals behind them most often target older Americans because they know that they are more socially isolated and have greater savings to steal.

These scams are varied in their initial contact. The initial inducement by the scammers to send them money can be driven by greed, fear, or the desire for companionship. Despite these differences the scams have one crucial similarity. They focus on keeping the victim isolated from the other people in their lives because the scam artists know that if the facts surrounding payments were known, the scam artists' spell would be broken, and the victims would stop sending money.

The need to isolate the victim leaves many older Americans in danger. Not only are older Americans targeted by scammers but once they have fallen for the scam, they are more likely to remain victims for longer and transfer a greater portion of their wealth. Once the loss is realized, older Americans have far less earning potential to recoup the loss, or more importantly for this letter, pay the potential tax due on the funds that were withdrawn from a 401k account or proceeds from the sale of a property or other asset.

It is my belief that the magnitude of the problem is far greater than most Americans realize. Suffering a theft loss is a demoralizing event. Victims are embarrassed to talk about it. The facts are only disclosed to trusted confidants such as spouses, religious leaders, and financial professionals such as accountants and lawyers.

Tax Impacts of Theft Losses

While tax may not be the first issue on victims' minds when the loss is discovered, tax plays a significant role in the financial impact of the loss. To highlight this impact, take a simple hypothetical with a retired taxpayer with the bulk of her retirement in a 401k account. As a pre-tax account (meaning the income used to fund the 401k was not taxed and will be taxed upon withdrawal) any distributions are subject to income tax.

Example 1

Taxpayer A withdraws $500,000 from her 401k account. This income is taxable. The full $500,000 is transferred to a scam artist. There is no deduction available to the taxpayer. In this hypothetical the taxpayer would owe approximately $140,000 in tax on the 401k account withdrawal.

Example 2

Taxpayer B withdraws $500,000 from her 401k account. This income is taxable. Again the amount is transferred to a scam artist. However in this case, there exists a theft loss deduction. This deduction can offset the income from the 401k account withdrawal. The taxpayer is economically poorer, but the pain and anger created by paying the government a tax on stolen assets is substantially removed.

These two examples highlight one of the additional hurdles the tax code imposes for scam victims without a theft loss deduction. Our income tax system is designed to match tax to cash. The tax on capital gains generally requires a realization event to provide taxpayers cash to pay the tax. Income taxes on wages have a robust withholding regime to make sure the cash is available to pay the tax. Victims of scams generally do not have any cash to pay the tax.

The victim who withdrew $500,000 from her 401k and sent it to a scam artist does not have the money any longer. A tax bill of $140,000 requires the victim to withdraw more assets to pay the tax. A second layer of tax will have to be paid on those withdrawals. The $500,000 scam artist loss can become a $700,000 loss once the tax liability is satisfied.

For seniors without future earning capacity, these losses are frequently paid for by cuts in their standard of living. For a middle-class retiree even a modest $20,000 loss from a 401k account, plus the tax bill from the distribution, can imperil many of the anticipated joys of retirement.

This mismatch of cash to tax, and the hypothetical $140,000 tax bill, leads many victims to feel as if the United States is victimizing them again. From my experience it is very difficult to separate the two events, i.e., the theft and the tax, because in the minds of the victims it is one long event. Filing the return, and the series of notices that may follow if the tax cannot be paid, are all reminders that the government demanded tax on top of what was lost with the scammers. The victims think about what their retirement could have been if the government had not piled-on with the scammers; how the victims were going to use the money to travel, spend time with family, or in some cases to buy medication.

From an agency perspective it puts the IRS in a no-win situation because it cannot ignore the law based on equitable concerns, rather it must collect the tax due. A taxable retirement distribution does not cease to generate a tax liability because a scammer took the money. There are programs that allow for taxpayers to pay less than the full amount owed if payment would cause economic hardship, but these programs have stringent requirements. Using the same example above, if the $140,000 tax was not paid because the withdrawal was all the taxpayer's liquid assets, but she had $400,000 of equity in a house, the IRS would not forgive the debt because the taxpayer has more than $140,000 in assets.

Equitable Considerations

The tax law on theft losses is inequitable. Individual theft losses are limited, but business losses or theft losses in the conduct of a for-profit activity are not. What differentiates the two is a matter of facts and circumstances. Put in more plain language it is a complex area of the tax law where professional advice can make a difference between a loss being deductible or not.

I am frequently retained by clients who wish to know what the legal requirements are to report a theft loss. I help them navigate when there is a profit motive, and when the transaction becomes a closed and completed transaction. I review the messages sent by the scam artists, evaluate what the promises were, and make determinations about the adequacy of their efforts to recover the money that was sent to the criminals. This work is time consuming and requires specialized knowledge. As a result, the legal fees can be expensive.

While it makes sense to do this for a high six-figure loss, it does not make economic sense to do this for a \$50,000 or even a \$100,000 loss given the deduction must be multiplied by the marginal tax rate. Engaging a tax attorney also requires that the taxpayer who suffered the loss knows a tax attorney or a sophisticated CPA, which many Americans, especially those in rural areas, may lack access to.

The complexity of the tax code creates a two-tier system. Those with larger losses can sometimes take the theft loss deduction while taxpayers with the same circumstances but smaller losses cannot. Restoring the theft loss deduction for all losses, not just for theft losses incurred when the taxpayer can show a for-profit motive would reduce these inequities.

Conclusion

While tax law has a reputation for being complex, it follows several guiding principles that are generally considered fair and equitable. One of these principles is matching tax to cash. While it may appear that victims of criminal scam artists have a cash realization event, in reality the money has disappeared. The victims are economically poorer but lack a deduction to match that economic reality. This creates a feeling that the government is penalizing them a second time for the actions of a criminal. For elderly Americans, the prime targets for these scam artists, this feeling is particularly acute. They know that paying the tax, on top of what they have already lost, is going to further reduce their ability to support themselves during their old age, and negatively impact their quality of life.

If I can be of any further assistance or elaborate further please do not hesitate to contact me.

Sincerely,

James Creech

James Creech

(4) Leslie Book, Villanova University Professor of Law, Center for Taxpayer Rights Senior Fellow, and Vice-Chair of the Individual and Family Taxation Committee of the Section of Taxation of the American Bar Association with Christine Speidel, Villanova University Associate Professor of Law, Villanova Federal Tax Clinic Director, and former Chair of the Pro Bono and Tax Clinics Committee of the Section of Taxation of the American Bar Association

VILLANOVA
UNIVERSITY

CHARLES WIDGER SCHOOL *of* LAW

March 14, 2024

Senator Bob Casey
393 Russell Senate Office Building
Washington, DC 20510

Re: The Need to Address Income Tax Problems for Scam Victims

Leslie Book is a Professor of Law at the Villanova University Charles Widger School of Law and Senior Fellow at the Center for Taxpayer Rights. I am formerly the Director of the Villanova Law School Federal Tax Clinic and the current Vice-Chair of the Individual and Family Taxation Committee of the Section of Taxation of the American Bar Association.

Christine Speidel is an Associate Professor of Law at the Villanova University Charles Widger School of Law and the Director of the Villanova Federal Tax Clinic. I am a former Chair of the Pro Bono and Tax Clinics Committee of the Section of Taxation of the American Bar Association.

We are familiar with the growing problem of online scams. The FTC, for example, has provided significant information that discusses the various types of so-called imposter scams.[1] As of October 2023, the FTC estimates that consumers report losing approximately $2.7 billion to online scams since 2021.[2]

Through our work in the tax community, we have become increasingly aware of how the federal income tax consequences can compound the problems that scam victims face.[3] That is primarily due to two reasons: first, people will often liquidate assets (such as assets held in brokerage accounts) and use the cash proceeds to pay the perpetrators of the scam. That liquidation is a realization event for income tax purposes, and if the assets are sold for an amount higher than their cost, the difference is generally gross income subject to tax.[4] Second, it is

[1] *See How to Avoid Imposter Scams*, FEDERAL TRADE COMMISSION CONSUMER ADVICE, https://consumer.ftc.gov/features/how-avoid-imposter-scams
[2] *See FTC DATA Shows Consumers Report Losing $2.7 Billion to Social Media Scams Since 2021*, FEDERAL TRADE COMMISSION (Oct. 6, 2023), https://www.ftc.gov/news-events/news/press-releases/2023/10/ftc-data-shows-consumers-report-losing-27-billion-social-media-scams-2021
[3] The media has also noted the tax consequences that victims face as a result of the scams. *See* Michael Laris, *A Former White House Scientist Was Scammed Out of $655,000. Then Came the IRS.*, THE WASHINGTON POST (Dec. 14, 2023, 6:00 AM), https://www.washingtonpost.com/dc-md-va/2023/12/14/cyber-crime-scams-irs-taxes/
[4] In addition, it is possible that a victim faces an additional 10 percent early withdrawal penalty if an individual withdraws from an IRA or retirement plan before reaching age 59½. *See*, e.g., IRC § 72(t)(1). *See also Retirement*

possible that the victims are not able to take a tax deduction for any of the losses associated with the scam.

The possible inability for individuals to deduct losses from scams is primarily attributable to changes made in 2017 legislation that is known as the Tax Cuts and Jobs Act (TCJA).[5] Prior to the TCJA, households who itemized their deductions could deduct their unreimbursed net personal losses that "arise from fire, storm, shipwreck, or other casualty, or from theft" (referred to often simply as "theft or casualty" losses)."[6] Individuals whose theft or casualty loss deductions exceeded their taxable income were entitled to carry forward the deduction to subsequent tax years, with theft losses deductible in the first instance in the year that the theft is discovered.[7]

Pursuant to the TCJA, for the years 2018 to 2025, individuals are only entitled to deduct theft or casualty losses that are attributable to federally declared disaster areas.[8]

The effect of the TCJA change limiting the deduction of theft and casualty losses to federally declared disaster areas can be catastrophic for victims of imposter scams. In addition to the financial and emotional costs associated with the scam, victims may be facing an income tax liability associated with the liquidation and no ability to offset any of the financial losses (let alone tax gain) with a tax deduction.

This letter only briefly summarizes the federal income tax consequences. In a limited number of cases, it is possible for a victim to argue that the imposter scam was related to a profit-seeking activity. That distinction is important because the TCJA did not limit the ability for individuals to take deductions associated with profit-seeking activities, including losses relating to theft.[9] Some types of imposter scams, such as scams that promise a return on an investment, seem more connected to profit seeking than other types. Other types of scams, such as romance scams or scams relating to supposed threats to family, seem less related and would likely not support such a deduction. Unfortunately, there is no formal guidance from the IRS concerning the possibility of taking profit related theft losses associated with imposter scams.[10]

While the federal income tax system cannot mitigate all the harm associated with these scams, Congress should, at a minimum, restore the ability for individuals to deduct their unreimbursed net personal losses associated with

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Topics: Exceptions to Tax on Early Distributions, IRS, https://www.irs.gov/retirement-plans/plan-participant-employee/retirement-topics-exceptions-to-tax-on-early-distributions

[5] P.L. 115-97.

[6] IRC § 165(c)(3). Under law prior to the TCJA, the deduction for personal casualty taxpayers could only deduct such losses to the extent that each loss exceeded $100, and their total loss exceeded 10% of the taxpayer's adjusted gross income. IRC §§165(h)(1) and (2). *See also* IRS Publication 547, *Casualties, Disasters, and Thefts: For use in preparing 2017 Returns* (Mar. 5, 2018), available at https://www.irs.gov/pub/irs-prior/p547--2017.pdf.

[7] IRC § 172(d)(4) (treating personal theft or casualty losses as net operating losses subject to carryforward); IRC § 165(e) (treating a theft loss as sustained in the year that the taxpayer discovers the loss).

[8] IRC § 165(h)(5). *See also Topic no. 515, Casualty, Disaster, and Theft Losses*, IRS, https://www.irs.gov/taxtopics/tc515.

[9] IRC §§ 165(c)(2) & (3); *see also* John H. Skarbnik, *Casualty Losses and Expenditures Under Sec. 162 or 165*, THE TAX ADVISER (May 1, 2018), https://www.thetaxadviser.com/issues/2018/may/casualty-losses-expenditures-sec-162-165.html (stating that losses from casualty or theft of business or investment property is a deduction under 165(c)(2)).

[10] In addition, however, it is possible that the IRS might argue that public policy concerns would bar any such deduction. *See* Edward J. Schnee & W. Eugene Seago, *Violation of Public Policy and the Denial of Deductions*, THE TAX ADVISER (May 1, 2011), https://www.thetaxadviser.com/issues/2011/may/may2011-schnee.html; *see also* Mazzei v Commissioner, 61 T.C. 497 (1974) (applying public policy doctrine in counterfeiting scheme case and denying theft loss deduction for taxpayer's stolen funds).

theft or casualty. That legislation should be retroactive to 2018[11] (the year the TCJA went into effect) and be part of a broader combined federal, state and local effort to inform the public about the dangers and full costs of these scams.

We would be happy to discuss these issues further if that would be of assistance.

Sincerely,

Leslie Book

Christine Speidel

[11] The collection period for federal taxes is generally ten years from the date of assessment. IRC § 6502(a). Given the high dollar amounts involved in some of the cases, for example where hundreds of thousands of dollars in retirement savings were liquidated, there are likely scam victims who still owe a federal tax bill from 2018-2023 which they are unable to pay. The earliest date a 2018 tax bill could fall outside of the collection period would be April 15, 2029. Legislation could allow these individuals to reduce or eliminate their liability by claiming a theft loss deduction on an amended tax return. A separate question for policymakers is whether to provide a special window for impacted taxpayers to claim refunds. *See, e.g.*, Combat-Injured Veterans Tax Fairness Act of 2016, Pub. L. 114-292 § 3.

(5) Charlene Luke, Hubert C. Hurst Eminent Scholar Chair and Professor of Law, Associate Dean for Institutional Affairs, University of Florida Levin College of Law

March 15, 2024

Chairman Robert P. Casey, Jr.
U.S. Senate Special Committee on Aging
G16 Dirksen Senate Office Building
Washington, DC 20510

Re: Personal Theft Losses

Dear Senator Casey:

My name is Charlene Luke, and I am a law professor at the University of Florida Levin College of Law. I am writing in my individual capacity and do not speak on behalf of the University of Florida or its law school. I have been teaching about the tax consequences to individuals of theft loss for over 20 years. Two classes I regularly teach cover the tax treatment of the theft losses experienced by individuals; those are J.D. Income Tax and LL.M. Taxation of Property Transactions. I have written two articles about the closely related issue of casualty losses for individuals, and I have joined as a co-author on a forthcoming textbook that includes materials on both theft and casualty losses for individuals.

If an individual experiences a theft in the context of a business or an investment and does not obtain a recovery, whether through insurance or some other avenue, then a theft loss deduction is available. Until the 2017 tax legislation, individuals were also able to take as an itemized deduction a portion of their unrecovered theft losses related to their personal-use property. The elimination of the ability of individuals to take any personal theft loss deductions arguably conflicts with fundamental income tax principles.

Under the classic, normative definition of income, income means net increases to wealth plus personal consumption. In many ways, the U.S. income tax system follows this definition because individuals are taxed on their realized increases in wealth over which they have ownership, and individuals are allowed to reduce income for expenses spent on or losses experienced in directly creating wealth increases—for example, business and investment expenses and losses are generally deductible. Costs spent on personal expenses and losses involving personal-use assets are instead generally nondeductible; disallowing deductions relating to personal-use assets and expenses is equivalent to including personal consumption as a component of income.

When, however, individuals are constrained by external events to make financial payments or external events cause individuals to experience losses, then such payments and losses no longer stem wholly from personal consumption choices. If such payments or losses are not recoverable, whether through insurance or otherwise, disallowance of a deduction for those payments and losses is no longer required by the normative definition of income. Fairness considerations, especially an individual's ability to pay, further support deductibility. The classic tax policy article making these points is "Personal Deductions in an Ideal Income Tax," 86 *Harvard Law Review* 309 (1972), by William D. Andrews. Congress has long recognized that unreimbursed medical care expenses, for example, represent a situation where expenses are not a matter of simple personal consumption choice, and the itemized deduction for medical care expenses remains in place, along with other forms of tax system relief.

In the case of theft losses (as well as casualty losses), there is arguably even less personal consumption choice than in the medical care expense area. When personal assets are stolen and recovery is not available, that loss represents a real and permanent diminishment to an individual’s wealth that is not due to personal consumption and for which the income tax system should provide assistance. As noted above, currently, if the unreimbursed theft loss occurs in a business or in an investment transaction, the loss is deductible, but for many thefts experienced by individuals, neither a business nor investment theft loss deduction will be available. For example, if an individual withdraws funds from a retirement or savings account and sends them to someone engaging in a criminal scam, unless the scam consists of a sham investment scheme (e.g., a Ponzi scheme), the theft will be treated as a personal loss and will not be deductible under current law. This recently occurred in a Florida case (Gomas v. United States, case no. 8:22-cv-1271-TPB-TGW) in which the taxpayer withdrew retirement funds and sent them to an individual who falsely claimed the payments were necessary to keep the taxpayer from being arrested for a series of made-up transactions relating to a closed business of the taxpayer. There was no question that a criminal theft had taken place, but because of the change to the theft loss deduction, the taxpayer was left without help from the tax system.

The change in 2017 to the theft loss deduction is a potential problem for anyone who is the victim of a personal theft crime, and older adults represent a population that may be particularly vulnerable to financial theft. Older adults will have retirement accounts that are a tempting target for thieves, who often operate using sophisticated methods that rely on newer technology. Access to AI will only exacerbate these problems. Once money is stolen, the difficulty in tracing the path of the funds and of the criminal behind the theft will often make return of the stolen property unlikely, and the insurance market for personal theft losses relating to cybercrime is still in its early stages. With the change to the theft loss deduction, the tax system no longer operates as an insurer—albeit a partial one—of last resort for those unable to obtain a recovery of the funds or those who are not covered by insurance.

My sense of how frequently the issue arises stems not from my personal legal practice but instead from reading media accounts and court decisions about the issue. My sense from these public sources is that the problem of theft for older adults is of significant concern.

Sincerely,

Charlene Luke

Charlene D. Luke
Hubert C. Hurst Eminent Scholar Chair & Professor of Law
Associate Dean for Institutional Affairs
University of Florida Levin College of Law
[redacted]

Letters from Low-Income Tax Clinics

(6) Legal Action of Wisconsin

LEGAL ACTION OF WISCONSIN

Providing free legal services to low-income Wisconsin clients since 1968 • Proporcionando servicios legales gratuitos a clientes de bajos ingresos en Wisconsin desde 1968

February 20, 2024

The Honorable Bob Casey
The United States Senate Special Committee On Aging
G16 Dirksen Senate Office Building
Washington, DC 20510-6050
Sent via email

Dear Senator Casey,

Thank you for your request regarding the destructive impact that Internal Revenue Code section 165(h)(5) has had on our clients who are victims of financial crimes. The 2017 Tax Cuts and Jobs Act ("2017 Tax Act") removed the theft loss deduction that had been available to victims of financial crimes, and the results have been devastating for folks like our low-income, elderly clients.

I. LEGAL ACTION OF WISCONSIN & OUR WORK WITH ELDERLY VICTIMS OF CRIME

Legal Action of Wisconsin (LAW) is the state's largest non-profit law firm, providing free, high-quality legal services to individuals and families with low incomes. Part of our work involves helping low-income individuals resolve consumer debts, including tax related consequences. We primarily represent low-income elderly victims of crime through our Elder Rights Project (ERP) and our Low-Income Taxpayer Clinic (LITC).

Our Elder Rights Project, funded by federal VOCA funds, includes a unit of attorneys specializing in providing civil legal aid to elderly victims of crime, including financial theft and abuse. In cases where the perpetrator can be identified as a person or business residing in the United States, ERP attorneys have been able to obtain civil judgments and settlements. In some cases, this work has resulted in perpetrators being subject to criminal prosecution. Our LITC is the only of its kind in Wisconsin. The LITC does not help individuals file their taxes; rather, LITC specializes in representing low-income taxpayers in controversies with federal and state tax authorities.

II. BY REMOVING THE THEFT LOSS DEDUCTION PROVISION IN 165(H)(5), CONGRESS HAS MADE IT HARDER FOR OLDER ADULTS TO RECOVER FROM FINANCIAL VICTIMIZATION

Legal Action is prohibited from lobbying (due to restrictions associated with Congressional funding we receive through the Legal Services Corporation) and cannot express an opinion on what Congress should do. Undoubtedly, Congress has made it significantly harder for older adults to recover from financial victimization, directly because Congress removed the theft loss deduction provision in 165(h)(5) when it passed the 2017 Tax Cuts and Jobs Act. The purpose of tax deductions is to get as close as possible to an accurate reflection of an individual's actual net income; a deduction is not a benefit. Prior to the 2017 Tax Act, when an individual withdrew money from a pre-tax account that was then stolen, that individual would still include the full withdrawal as part of their income, and then deduct from their income the amount that was stolen. This deduction allowed for a truer reflection of the individual's financial

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predicament. Removing the theft loss deduction is antithetical to the purpose of income tax, which is supposed to be based on an individual's ability to pay.

Many older individuals suffer from a theft or financial loss of some kind each year, and the removal of the theft loss deduction has compounded the devastation older people suffer in the aftermath of being scammed or exploited. Every year, the Federal Trade Commission ("FTC"), through the Consumer Sentinel Network releases a report that illustrates the different complaints made to governmental and regulatory entities in the previous year. For 2023, the Consumer Sentinel Network reported that there were 392,392 fraud reports from people aged 60 or older—comprising 35% of all the reported frauds—totaling a loss of $1.924 billion.[1] Although the report found that younger people, in the age range of 20-29, had reported losing money to fraud more often than older people, the older age group had a significantly higher median loss.

Commonly referred to as "scams," fraudulent thefts are characterized by fraudulent representations, typically made over the phone or internet, inducing victims to send funds voluntarily. Typically, scams are conducted by criminal enterprises, often operating beyond the reach of U.S. law enforcement. Leveraging technology and criminal networks, scammers pose as individuals, businesses, and government agents. They create an alternate reality for their victims, promising romance, prizes, friendship, and opportunity, or threatening their personal or financial security. Scammers often induce taxpayers to take distributions from IRAs or other tax-preferred accounts and then instruct individuals to send those funds to the scammer through a variety of means.

In fact, the aging population is a prime target for elder abuse—not just from scammers, but from known individuals, such as family members, friends or other fiduciaries. According to a 2023 report by AARP, approximately 72% of all victimization occurs at the hands of someone the elderly individual knows.[2] This financial exploitation accounts for about $28.3 billion in theft from the elderly each year. These known-individual perpetrators will often gain access to the elder's finances by creating joint accounts or utilizing Power of Attorney documents. Once this access is obtained, the exploitation may not be immediately recognized until, for example, an elder receives an unexpected tax bill indicating that they owe taxes on distributions from an IRA.

Unfortunately, Congress has removed the ability to deduct the scammed or stolen amounts as a theft loss to income. Because those distributions have been purposefully made—regardless of whether the individual was lied to, scammed, or conned into moving retirement funds to an account that would be immediately stolen—the IRS generally determines these distributions to be taxable. Therefore, unfortunately, since the 2017 Tax Act eliminated the deduction for personal theft and other casualty losses, victims are no longer entitled to comprehensive protection or relief from tax costs associated with the transactions involved in certain financial scams. In eliminating the deduction for personal theft and other casualty losses for the 2017-2025 tax years, the 2017 Tax Act has imposed enormous financial and other burdens upon victims, compounding the harm caused by the initial crime.

There are several steps Congress could take to restore fairness to our clients and other crime victims, such as striking the rule and instructing the Treasury Department to take steps to mitigate its harmful effects. For those victims (including some of our clients) who already paid a portion of the tax, repealing the rule would permit refunds for liabilities already paid for tax years within the statute of limitations for claiming

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[1] FED. TRADE CMSN, CONSUMER SENTINEL NETWORK, DATA BOOK 2023 13 (2024), https://www.ftc.gov/system/files/ftc_gov/pdf/CSN-Annual-Data-Book-2023.pdf.
[2] Jilenne Gunther, AARP BankSafe Initiative, THE SCOPE OF ELDER FINANCIAL EXPLOITATION: WHAT IT COSTS VICTIMS 7 (2023), https://www.aarp.org/content/dam/aarp/money/scams-and-fraud/2023/true-cost-elder-financial-exploitation.doi.10.26419-2Fppi.00194.001.pdf.

a refund, which is, generally, three years from the date the return was due. Congress could also instruct the Treasury Department to review returns and conduct outreach as necessary to cause most taxpayers who were negatively affected by section 165(h)(5) to benefit from its removal.

Alternatively Congress could recommend that the Treasury Department consider Offers in Compromise for debts resulting from third party criminal acts to be eligible for public policy and equity reasons.[3] This would mitigate the damage of section 165(h)(5) for some of those most negatively-affected, though it would not relieve taxpayers or the IRS from the administrative burdens associated with Offers in Compromise, nor would this achieve the most equitable result.

III. How The Change To The Deduction Is A Problem For Older Adults

In general, an older adult's options for recourse when they are frauded out of their retirement savings is extremely limited,[4] and the state and federal income tax on scam/fraud-related withdrawals since the 2017 Tax Act is significant. Our clients have lost anywhere from $30,000 to $1.8 million, with an average loss of close to $600,000. Their federal tax liabilities range from $6,000 to $420,000, and about $110,000 average—no matter that the money withdrawn was then stolen. In each case, our clients lost nearly all their life savings to the scam, with no meaningful opportunity to recoup the lost funds.

Moreover, these individuals are at risk of losing their homes in order to pay the taxes. The IRS routinely places liens on personal residences to collect large unpaid liabilities; even if the IRS does not foreclose on the home (which they can), the lien prevents the individual from selling or having access to their home equity and leaves them under persistent threat of foreclosure. For many older individuals, their home is their most important—and often only—asset. Before falling victim to a scam, they may have been planning to pass their home down to their children as a primary source of inheritance. Collection can be even more devastating for victims who have savings remaining after the theft, because the IRS can quickly seize funds in a bank account by levy. For older individuals lacking the ability to restore their savings through work, the result will frequently be economic devastation, and they wind up with only Social Security to cover their expenses in old age.

The 2017 Tax Act's changes also extend to eligibility for public benefits. Many benefit programs rely on the previous year's federal tax return to determine financial eligibility, including, for example, eligibility for Medicare/Medicaid, subsidized housing, and SNAP benefits. Because the tax return of an individual scammed out of retirement funds will reflect an inflated AGI (erroneously reflecting the withdrawal that has been stolen as part of an individual's income), the changes to section 165(h)(5) can have devastating consequences for people who need—and truly are qualified for—these programs. For example, Medicare Part B premiums are based on the modified gross income reported on an individual's federal tax return from the previous year. Most recipients pay the minimum premium (currently $174.70 per month). But, those with higher incomes must pay a higher premium, known as the Income-Related Monthly Adjustment Amounts (IRMAA) ranging from an additional $69.90 to $419.30 per month. Individuals receive notification early in the year that they are being assessed the IRMAA, even though the additional "income" is not actually available to someone who has been scammed out of their retirement funds. The victim must then petition to the Social Security Administration to overturn the assessment, but may have to pay the elevated premium while they await a decision. Thankfully, at Legal Action we have not yet come across a victim whose appeal of the IRMAA was denied by Social Security. But it is an additional,

[3] *See* Part IV.
[4] If the client has been a victim of a scam, generally, there is little hope that funds lost via scam will be recovered. When these cases are accepted for representation by the Elder Rights Project, assistance is usually limited to helping the client file reports with local and federal law enforcement and making appropriate referrals. Very rarely do these referrals result in any sort of recovery for the victims. Additionally, the Elder Rights Project assists these victims with tangential legal issues that arise from the underlying victimization, including scams.

burdensome hurdle that victims must endure. Undoubtedly, there are elderly individuals who do not appeal the assessment and struggle instead to figure out how to pay the higher premium until their next assessment the following year. Like the money they were frauded out of, the unjustly higher premiums they paid are funds they will never get back.

IV. Ways Legal Action Has Seen The Deduction's Elimination Affect People

At Legal Action, we explore every avenue possible to help people suffering through the consequences of having been scammed by a stranger or frauded by a loved one. We advise victims on appealing IRMMA decisions, as discussed above, and we help clients file reports with local and federal law enforcement and making appropriate referrals. Due to the changes in the 2017 Tax Act, however, we must advise clients that they are required to state their stolen withdrawals from pre-tax accounts as income on their taxes and that they cannot deduct the theft loss from their income. For taxpayers who cannot pay a tax that is due, the IRS does offer several alternatives to collection, but eligibility for these programs is generally limited to those who lack the ability to pay. Taxpayers whose assets can be used to satisfy their liability in whole or in part are considered "collectible" and must demonstrate special circumstances for the IRS to refrain from seizing their income and assets.

The process for settling an undisputed IRS liability is called an "Offer In Compromise" ("OIC"). There are three grounds upon which the IRS will consider an OIC: inability to pay, doubt as to liability, and circumstances warranting special treatment for public policy and equity reasons. Because Congress clearly intended to eliminate the theft loss deduction, these applications for relief must be grounded upon an inability to pay or considerations of public policy and equity.

OIC applications do not represent a panacea—in fact, of the five OIC applications Legal Action has submitted on behalf of clients, all but one were initially rejected.[5] Moreover, Legal Action's understanding from conversations with IRS agents is that a financial crime resulting in tax liability does not qualify an OIC for acceptance based on policy and equity—we have requested an IRS analysis of this issue, but they have thus far declined to provide it. Therefore, our only grounds for OIC is inability to pay, which is a very high bar. To meet that standard, the IRS requires an individual to demonstrate that they will not be able to meet their basic living expenses if the IRS were to proceed with collection. OIC applications require taxpayers to fully disclose all assets, income and expenses, verified by supporting documentation. They are evaluated by agents in the IRS's OIC Unit. If accepted, the taxpayer must pay the settlement amount and timely file and pay their taxes for five years to avoid reinstatement of the full liability. A taxpayer can appeal a rejected application to the OIC Appeals Unit.

While we do not know the IRS's reason for refusing to consider OICs on public policy and equity grounds, it is likely related to Congress's express intent to eliminate the deduction for theft loss by doing so when it passed the 2017 Tax Act. In our appeals, we have reminded the IRS that the Internal Revenue Manual refers to circumstances where another party's criminal act created the tax liability as giving rise to consideration for settlement based on public policy and equity, the IRS cannot take actions that defy congressional intent. Meanwhile, older folks continue to face dire consequences.

Case Example: Bob and Mary, whose OIC appeal is currently under consideration, are a married couple in their 80s, living in a small town in rural Wisconsin. One day, Bob received several calls announcing he'd won $1 million and a new car. The scammers told Bob he needed to make several payments to receive the award, which he did, but he realized he'd been scammed when the prize never arrived. Bob reported it to the police, but then he began receiving urgent calls purportedly from bank

[5] One application was rejected because a prior year return was missing a signature. The remaining three we appealed. Of those, one was denied, one was accepted, and one remains under consideration.

officials, law enforcement and federal agencies. Using his personal information, they said his accounts were compromised and he was under criminal investigation. To secure his accounts, he needed to transfer the funds, which he did, not knowing the scammers could access the new accounts, which they drained. Out of fear and embarrassment, he did not tell his wife or other family members about these events until all the savings were gone – over $1.1 million, accumulated over a lifetime of work and thrift. All that remained was his social security and small pension, and their house. Months later, Bob and Mary received tax bills from the IRS and Wisconsin Department of Revenue (DOR). For the IRA withdrawals, he owed $112,000 to the IRS and close to $20,000 to DOR. With our help, they settled the debt with DOR for just $100. But the IRS did not accept their offer. Instead, they want this elderly couple to sell their house, as it is worth about $250,000 – enough to pay the tax in full.

Case Example: Scammers found Jennette's profile on a dating website and, using a fake profile, feigned romantic interest. After many conversations and pictures exchanged over several weeks, the scammers began asking Jennette for short-term loans to assist with urgent operations that her supposed romantic interest was conducting, under dire circumstances, related to what she believed to be an oil exploration company. These loans, which seemed professional enough to her eye, were extended, and the operations required ever-more from her. Most critically, her primary motivation was clearly not an expectation of profit,[6] but her warm feelings toward the man she believed to be her boyfriend. Had the circumstances been just different enough to indicate that she had a reasonable, primary motivation in the investment—with her romantic interest only being secondary—she could have been eligible to claim the deduction as an investment loss. Instead, ultimately, she was scammed out of about $1.8 million and remains financially devastated.

V. HOW OFTEN IT ARISES IN OUR ORGANIZATION

Legal Action's LITC began working on these cases in earnest in 2022. Since then, LITC has taken on 174 new cases. While only 7 of these cases have directly involved the theft loss issue, representing 4% of LITC's work, the amount of time required for these cases is disproportional to their numbers. Total LITC time spent on just these seven cases alone is 456.8 hours and counting. In 2023, our ERP attorneys aided about 450 clients. Of those, 85 clients needed help directly with cases involving scams and financial exploitation. Those 85 clients do not include those who called Legal Action for a bankruptcy, general debt collection, or housing related issues as a result of the scams.

Unfortunately, Legal Action has limited resources—which are becoming even more limited with the loss of VOCA funds. We know that our numbers represent just a small fraction of the individuals facing financial, emotional, and mental devastation as a result of the theft loss deduction elimination in the 2017 Tax Act. Truthfully, the vast majority of folks facing these kinds of problems do not realize that there are attorneys available to help them, or that their problem is even a legal one for which they might be able to seek help. Too often, the shame, fear, and embarrassment that follow being scammed or financially exploited are themselves roadblocks to seeking help, and too many people spiral into a debt that is made

[6] Section 165(h)(5) eliminates only "personal" casualty losses. Thefts incurred as part of a transaction "entered into for profit," which are separately described in Section 165(c)(2), were spared by the 2017 Tax Act. Victims of prize and investment scams may personal intend to profit, but these are generally not considered "transactions entered into for profit" under the large body of case law that distinguishes between "personal" theft losses and losses from transactions "entered into for profit."[2] Contrarily, losses from Ponzi schemes and sophisticated investment frauds, or committed by licensed investment managers, for example, were spared removal by the TCJA. The fundamental distinction between a "personal" theft loss and an "investment" theft loss (and thus, whether a deduction is available for years 2017-2025) is whether the taxpayer is or is not primarily motivated by a reasonable expectation of profit. In the example of Bob and Mary, Bob was seeking to win prize money, not invest. Moreover, the circumstances were not such that a reasonable person would have made the payments. To prove eligibility for the deduction, taxpayers must generally be able to provide documentation showing that a reasonable person might have made the investment.

even worse at tax time. They are left to grapple with the fall-out from victimization alone, while also navigating the financial dire straits of owing more taxes than they can pay, facing the remainder of their lives without their savings, and potentially being at risk for losing or facing gaps in critical public benefits at a time they may need them the most. This compounded devastation is one that too many well-intentioned, hard-working, responsible older folks are facing across Wisconsin and across the nation at large.

Thank you for your concern and attention to this issue. Please feel free to contact us with any questions you may have.

Sincerely,

Angel Kwaterski
Priority Coordinator, Consumer Law
Staff Attorney, Elder Rights Project
Legal Action of Wisconsin

Christopher Anderle
Director, Low Income Tax Clinic
Legal Action of Wisconsin

Abigail Bar-Lev Wiley
Legislative & Compliance Director
Legal Action of Wisconsin

(7) Legal Services of Northern Virginia

LEGAL SERVICES OF NORTHERN VIRGINIA

Opening Doors to Justice

LSNV

March 5, 2024

The Honorable Senator Bob Casey
as Chair of the U.S. Senate Special Committee on Aging

The Low Income Tax Clinic (LITC) at Legal Services of Northern Virginia (LSNV) is grateful for the interest of the Special Committee on Aging on the increasing victimization of older adults through fraudulent financial schemes and on how the modification by the 2017 Tax Cuts and Jobs Act to 26 U.S. Code § 165(c)—on the deduction of casualty and theft losses— has affected them. We are also honored that your staff has requested our submission of statements on how, in our experiences, such modification has negatively impacted older adults and low income taxpayers.

As background, LSNV is a nonprofit law firm that offers a comprehensive array of services— free of charge— to low income and moderate income clients in Northern Virginia as well as a more limited array of services to some adjacent jurisdictions. While our organization provides services to individuals of all ages, we have identified specific needs among and solutions for those who are 60 years of age and older and have thus created the Elder Law Practice Group. Attorneys and staff in this practice often cooperate with others assigned to our other specialty areas, including with those who labor within our LITC. The LITC, in turn, focuses its work on federal tax controversies but also helps resolve its clients' related issues with the Virginia Department of Taxation. While our experiences and analysis below stem solely from our LITC expertise, they have undeniably developed in the context of our organization's holistic understanding of the social and economic needs of our clientele.

As the Special Committee on Aging and numerous federal agencies have amply documented, older adults in the United States are increasingly becoming victims of financial fraud and confidence schemes that collectively rob them of billions of dollars annually. It has been said that some of these criminals exploit our elders' politeness, their trust, and, sadly, their isolation and loneliness. It must be said that they also exploit congressional inaction in the regulation of emerging markets and technologies like crypto-currencies.

In the last year, our LITC has represented a number of low-income, older individuals (at times, half of my caseload) in resolving the tax disputes arising from their perceived investments in what turned out to be complex, crypto-currency Ponzi schemes. Our clients stand among the many who have fallen prey to the promise of substantial, short term gains by sophisticated financial criminals with the ability to replicate legitimate sources thus securing the victim's trust and absconding with their life savings.

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LSC

Unfortunately, they also stood among the many confused by the implications of the temporary elimination of the casualty and theft losses deduction under 26 U.S. Code § 165(c). Even seasoned tax practitioners have so far counseled taxpayers that theft losses suffered as victims of cryptocurrency investment scams cannot be deducted from gross income despite their obvious nature as "transactions entered into for profit."

In our clients' cases, such counsel prevented them from recognizing significant losses that would allow them to offset gains recognized upon selling other assets to afford the purchase of (what they believed in good faith were) crypto-currency investments or to offset significant tax liabilities and penalties after withdrawing funds from their retirement accounts to seek higher yields of return in what we now know were fraudulent crypto-investments.

Our LITC was fortunately able to leverage our Qualified Tax Expert's experience and our administrative law and policy expertise to develop an aggressive approach, preparing amended tax returns for the tax years when the investment-related frauds were perpetrated as well as creating administrative support memoranda to advocate for the application of Ponzi investment fraud treatment to our client's experienced losses under existing Internal Revenue Code provisions.

Without our involvement, taxpayers who collectively endured more than $2.5 million dollars in fraudulent crypto-investment losses would have been forced to pay taxes upwards of $500,000. They would have been forced to sell or refinance their homes, dispose of their vehicles, or attempt a reentry into the employment market in the midst of their retirement to pay their tax liabilities and avoid destitution. It is a foregone conclusion that this has been the fate of the many taxpayers outside our range. This should be no one's fate because all taxpayers are within yours.

Sincerely,

Walewska M. Watkins, Esq.
Pronouns: She / Her Pronombre: Ella
Low Income Tax Clinic Staff Attorney

LITC
Low Income
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(8) Legal Aid of Southeast and Central Ohio

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March 7, 2024

Chairman Bob Casey
U.S. Senate Special Committee on Aging
G-16 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Casey,

Thank you for your request for information about the impact of the modification to the casualty and theft losses deduction in the 2017 Tax Cuts and Jobs Act on older individuals. I am the Low Income Taxpayer Clinic Director at Legal Aid of Southeast and Central Ohio, previously known as the Legal Aid Society of Columbus and Southeastern Ohio Legal Services. I have been representing low to moderate income and senior taxpayers in Central Ohio since 2004. In my role we have seen increasing reports of seniors being victims of theft of their retirement accounts, representing three such taxpayers in the last 9 years with this issue. The first two cases we saw were easily resolved as the taxpayers were able to exclude most of the stolen funds from being taxed using the theft losses deduction. However, the theft against our most recent client occurred in 2019. Therefore, when the thieves stole over $180,000 out of her IRA and pension accounts, the IRS got over $20,000 in withheld taxes that she is, so far, unable to get refunded to her. She has nothing left.

This client is a US Citizen who immigrated to the United States from China when she was a young woman. She married and had children. When her youngest child was a teenager, she started working part time jobs. She scrimped and saved so that she could invest in her retirement accounts and purchase her family a home. After her husband died and she downsized because was having a hard time getting around, she sold her home and deposited the proceeds of the sale into her investment accounts. In 2019, she was a 77 year old widow living alone. She was contacted by a team of individuals who said they were from China. They first befriended her and then threatened her with deportation and criminal charges for participating in a theft scam. They told her she could prove she wasn't involved with this theft scam by transferring her money to them so they could check it. If she faced charges, they said, her name would go on an international list, as would the names of her children and grandchildren, bringing dishonor to them all and interfering with their job prospects. She was terrified that she would have to go back to China and that she would ruin the lives of her family if she did not distribute the funds to these people.

Once she learned that the whole thing was a scam, she, with the help of her son, reported the crimes to the local police, the FBI and the Chinese consulate. She was not able to get her money back. She does not owe the IRS or the State of Ohio any taxes on the money because she withheld taxes on her withdrawals per the terms of her accounts. Her federal return reported $21,458 in tax and $22,450 in withholding, $992 of which was refunded to her. If the theft loss deduction were applied, she would not have owed any tax and would have received a full refund of the entire $22,450 of federal income tax withholding.

My client is currently living on a little over $1,070 per month in social security income. After paying rent and utilities, she has very little money left over for food but she is helped by free lunch one day a week in her apartment complex. She saves leftovers from lunch to eat later in the week. When she can get free or reduced cost produce, she freezes some of it to enjoy over the winter when there is less produce available. She is very angry with herself about falling for the lies of the predators who stole her funds and feels deep shame about the thefts.

If the theft losses deduction had been available for her, she would have some of her hard earned money as an emergency fund in case she needs health care and cannot afford her co-pays for Medicare or to cover other necessities.

Thank you for your time and attention to this important issue.

Sincerely,

Megan L. Sullivan

Megan L. Sullivan (she, her, hers)
Legal Aid of Southeast and Central Ohio
Managing Attorney/ LITC Director
[redacted]

(9) Legal Aid of Arkansas – Springdale, Low Income Taxpayer Clinic

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March 8, 2024

Senator Robert Casey, Chairman
U.S. Senate Special Committee on Aging
G-16 Dirksen Senate Office Building
Washington, DC 20510

Dear Mr. Chairman:

Thank you for requesting information about our experience assisting seniors who have suffered scam losses that are limited by the Tax Cuts and Jobs Act of 2017 ("TCJA"). As the director of the Low Income Taxpayer Clinic at Legal Aid of Arkansas since 2011, I have represented and advised thousands of low income taxpayers in their controversies with the IRS. In addition to my law degree, I have Masters of Taxation and Masters of Accountancy degrees. Prior to directing the LITC, I operated and supervised multiple VITA (Volunteer Income Tax Assistance) sites in Arkansas, where we prepared thousands of tax returns for low income taxpayers. I have also held positions at CPA firms and law firms prior to my move to this rewarding work. I am essentially the only attorney at Legal Aid of Arkansas who represents taxpayers with the IRS, but we utilize several pro bono volunteers, as we did in these scam loss cases. Our volunteer, RG Earnest, and I developed a niche expertise in this area as a result of our representation in these cases.

LITCs do more than just represent taxpayers before the IRS. They also educate taxpayers about their rights and responsibilities. As you probably know, LITCs are also tasked with monitoring and reporting systemic issues at the IRS. Legal Aid of Arkansas is funded in part by the Legal Services Corporation. While LSC regulations limit our legislative activities, we are anxious and willing to assist you in every way permissible.

Prior to tax year 2018, a taxpayer was permitted by IRC section 165 to deduct a personal theft loss from their gross income as an itemized deduction. Although the deduction was limited to the loss in excess of $10 and 10% of their adjusted gross income, it was available to taxpayers who had suffered a theft loss during the tax year. Such theft losses include losses resulting from scams. The TCJA essentially eliminated a taxpayer's ability to take this personal theft loss deduction for tax years 2018 to 2025. Consequently, taxpayers who suffer losses from scams in these tax years are not permitted to lower their federal income tax liabilities by deducting the scam loss from their adjusted gross income. So, in addition to having suffered the financial loss of the scam, the individual taxpayer suffers the additional cost of tax on an amount of income that does not represent how much money the taxpayer actually received that year.

For example, say a retiree had $70,000 in adjusted gross income in 2023, but was the victim a scam that year which caused her to lose $50,000. Economically speaking, she netted $20,000 of income in 2023, but under the TCJA, she *owes* tax on $70,000. Without the TCJA, the IRC would permit her to deduct a substantial portion of the scam loss from her adjusted gross income, allowing her to pay tax on an amount of income that is more in line

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with her actual income for 2023. The result of the TCJA is that victims of scams wind up owing tax on an amount of income that does not reflect their economic reality for that tax year. And, they oftentimes do not even have the money to pay this inflated tax because all their money is in the hands of their scammer. Obviously, this issue has a particularly damaging impact on seniors who are on fixed incomes, are no longer able to work, and are easier to scam. They struggle to recover emotionally and economically from their scam losses, and they are pursued by an IRS that is dutybound to collect legitimately assessed taxes. Additionally, scam victims are often older, less Internet-savvy, and especially embarrassed about their victimhood. Although we come into contact with thousands of Arkansas taxpayers annually, we cannot even imagine how many low- and moderate-income taxpayers this new, restrictive, provision has affected. Most taxpayers are self-represented and not familiar with the tax law or the IRS procedure for contesting their potential or assessed income tax liabilities.

The Low Income Taxpayer Clinic at Legal Aid of Arkansas has represented three taxpayers with a scam loss issue in a tax year beginning after December 31, 2017. In two of these cases, we were able to get our taxpayers a good result by highlighting their unique situation and utilizing other provisions in IRC section 165 that permitted them the deduction. We lost the controversy for the third taxpayer because his situation prohibited us from utilizing any other provision of section 165 to deduct his scam loss.

In all of these cases, we have considered the applicability of the principle announced in the 2013 US Tax Court case, *Roberts v. Commissioner*, 141 T.C. 19. In that case, the Court held that the taxpayer was not liable for the income tax on distributions from his retirement account because "the IRA distribution requests were unauthorized, the endorsements … were forged, he did not receive the economic benefit of the IRA distributions, and the IRA distributions were not made to discharge any legal obligation of his." Under the *Roberts* principle, the taxpayer can simply exclude, not deduct, the distributions from his taxable income. Unfortunately for our taxpayer victims, they themselves, even admittedly at gunpoint, are the ones making the withdrawals.

We took on our very first case of this kind early in 2019. A retired widow was tricked into turning over her entire retirement funds and all her remaining assets to a scammer online. The VITA preparers included this senior citizen's Forms 1099-R income on her return and e-filed the return. The retirement account withdrawals resulted in substantial income tax liabilities that our client was unable to pay; she had given all of her money to her scammer. VITA promptly sent her to us for help. When she came to Legal Aid, she owed almost $150,000 to the IRS and over $35,000 to the State of Arkansas. At the same time, she was penniless, broken, and terrified due to the scam. She reported the crime to local and federal authorities, and we went to work. Her scammer had convinced her that he had a highly profitable overseas business, was temporarily and unjustly incarcerated, and needed to pay a large trove of employees to keep his successful venture afloat. We amended the return to deduct her enormous theft loss, based on some evidence that she had a profit motive in investing her funds into this venture. The IRS accepted this position and processed the amended return. It then issued a refund of her federal income tax withholding, which of course was minor compared to the enormity of her theft loss. The IRS has the discretion to process an amended return or not. If an original return shows a significant amount of tax due, the IRS may balk at accepting an amended return which decreases the tax. We were excited in this case that the IRS processed our client's amended return to give her some relief.

Our second victim also came to us during 2019 regarding his 2018 income tax assessment for retirement withdrawals. This 53-year-old pastor and his wife were extorted out of his life savings of $283,000 and now had a federal tax balance of over $60,000. Because Arkansas follows federal law, the couple also owed the State approximately $10,000. In this case, the extorter threatened to destroy the pastor's reputation and to publicly accuse the the pastor's son of rape (which the son denied). Rather than allowing the story to go public, the pastor transferred everything he owned, including his retirement account, to the criminal. Because there was no profit motive, we knew we couldn't take the theft loss deduction. Instead, we focused on the *Roberts* factors: we believed that the pastor never had control of the funds and certainly did not receive any economic benefit. Unfortunately, in this case, we could not convince the IRS to even process the amended return, which they considered within their discretion. During this very stressful time for our clients, the pastor's wife died. The pastor was forced to declare bankruptcy after a long, fruitful career, solely due to this scam. The experience has ruined him. If this couple had been able to take the theft loss deduction, at least they wouldn't have had tax bills totaling over $70,000.

In 2022, our third victim, a widowed, disabled veteran, was extremely proactive and working with the FBI when she contacted us. She had nursed her husband and mother through COVID-19 and lost them both. At the age of 50, she turned to the Internet for comfort and support. Her scammer used similar techniques to our first case, including amazingly similar fact patterns, to extract all of her retirement funds and other assets in 2022, leaving her destitute. Based on our one success using the theft loss deduction, Legal Aid and our volunteer attorney prepared her original return. We deducted her loss as an itemized deduction on Form 4684 in the amount of almost $1,700,000. As a precaution, we included a Form 8275 disclosure statement regarding the taxpayer's position on the 2022 return. As you know, the IRS has 3 years to open an audit.

Each of the cases described above involved situations for taxpayers that were, by themselves, traumatic and heartbreaking. The resulting tax consequences only made things harder for them. While two of our clients were not quite seniors, they nonetheless underwent an experience that unfortunately often happens to seniors. If fact, part of what made our clients targets was no doubt the fact that, like good hardworking Americans, they had built "nest eggs" for their retirement years. What they never expected was to lose it all to fraudsters and to thereafter be pursued by the IRS for taxes that they could no longer pay.

As I am sure you know, for most American taxpayers, and especially low-income taxpayers, their retirement fund constitutes their only liquid asset. Once they lose this asset, they have nothing. At Legal Aid, our clients normally don't have much to be stolen. So, we would not normally have any appropriate examples. But, these clients became eligible for our services because of the losses. Prior to the scams, these taxpayers were doing just fine financially.

Of course, as described above, part of the income tax issue arises because these retirement funds originally were pre-tax withholdings from the taxpayers' paychecks. The US Treasury is entitled to the tax on these wages, but the IRC permits deferral of this tax until a taxpayer enters their retirement years. However, when the taxpayer has been scammed out of their hard-earned retirement money, the withdrawals have not resulted in an accretion to wealth that should be subject to tax. As explained above, because the TJCA denies a deduction for scam losses, the taxpayer is required to pay tax an amount of "income" that does not actually reflect that taxpayer's economic reality for that year, which as shown may have been a devastating year for that taxpayer both emotionally and financially. Additionally, if the scam victim is under 59 ½, they are subject to an additional "insult" to their injury: the additional 10% penalty for early withdrawal. To us, the deduction, or netting, of the theft loss makes sense in these situations because the taxpayer could show that they withdrew amounts from their retirement accounts—by including the withdrawals in their adjusted gross income—but never actually benefited from those withdrawals because of the theft loss.

Congress no doubt had its reasons for prohibiting the deduction of personal theft losses, but we wonder whether it fully considered its impact on Americans who have suffered scam losses; seniors, who constitute a vulnerable class of taxpayers, are the ones with hard-earned retirement accounts. In the process of repealing the deduction for personal casualty and theft losses in the Tax Cuts and Jobs Act of 2017, the House of Representatives Ways and Means Committee Report of November 13, 2017, indicates summarily:

> The Committee believes that the repeal of many existing tax incentives, including the deduction for personal and casualty and theft losses, makes the system simpler and fairer for all families and individuals, and allows for lower tax rates…[and] is consistent with streamlining the tax code, broadening the tax base, lowering rates, and growing the economy. HOUSE OF REPRESENTATIVES WAYS AND MEANS COMMITTEE REPORT ON H.R. 1 [H.R. Rep. No. 115-409, 115th Cong., 1st Sess. (Nov. 13, 2017).

It would be interesting to learn, during your investigation, if there is another underlying reason for the elimination of the personal theft loss. The TCJA did not eliminate several other itemized deductions. For example, the gambling losses deduction remains in the Code unchanged. To us, the gambling loss offset to gambling winnings is of the same nature as the theft loss offset.

As you can understand from the cases we describe above, these cases are distressing for us at Legal Aid of Arkansas and other LITCs throughout the United States. We look forward to working with you on this project so that we can help protect more taxpayers in the future.

Sincerely,

Jennifer W Gardiner

Jennifer W. Gardiner, Attorney at law
Director and Qualified Tax Expert
Legal Aid of Arkansas
Low Income Taxpayer Clinic

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March 13, 2024

Senator Bob Casey
Chair, U.S. Senate Special Committee on Aging

Re: Effect of the restriction on theft losses on elderly taxpayers

Dear Chairman Casey,

My name is Christina Wease, and I am the Director of the Alvin L. Storrs Low-Income Taxpayer Clinic at Michigan State University College of Law. I am a licensed attorney and specialize in tax controversy issues as they relate to low-income and English-as-a-Second language taxpayers. I have worked in the Clinic since 2012. During the last eleven years at the Clinic, I have helped over 1600 Michigan taxpayers resolve their income tax issues with the IRS and Michigan Department of Treasury. Through my work in the Clinic I have seen the devastating impact the restriction on theft loss deduction has on taxpayers, including the elderly.

We have seen this issue in our clinic at least twice in recent years. Most commonly, elderly taxpayers withdraw large sums of money from their retirement accounts to pay a scammer. They are pressured to not set aside a portion for the tax burden and send the entire amount to the scammer. This results in a large tax debt to the IRS and Michigan Department of Treasury.

The elimination of the theft loss deduction has been catastrophic for many taxpayers. One client owes over $60,000 to the IRS and several more thousand to Michigan Treasury. Not only is the taxpayer without the retirement money she has saved for decades, but she now also owes taxing agencies.

Our client paid over $200,000 to someone in a romance-based scam. She met this person online and was quickly pulled into an intricate scam that has been perfected by criminal organizations. These types of scams have become so popular they are their own career path. "Yahoo Boys" are a popular choice of employment in Nigeria and additional African countries, where men scam men and women in other countries by making them fall in love with fictitious people. They use "catfishing" to make the person believe they are talking to a real individual, and they message them consistently to maintain contact. Once they have them emotionally invested, they are able to make a living off continued requests for money. Lonely, elderly taxpayers are particularly susceptible to these crimes. Please see the attached article about the "Yahoo Boys."

These scammers typically make contact through internet apps, including social media and gaming apps. One common ploy is referred to as "oil rig scam." The scammers talk every day until they feel that there is a weak spot they can expose. They will pretend to be on an oil rig when an emergency like an explosion suddenly occurs. After the shocking explosion occurs, they will not contact their victim for several days. The victim, understandably distraught and worried for their safety, continues to reach out. The scammer will then reestablish contact and ask for money. This is what occurred in our taxpayer's case – our taxpayer believed she watched her beloved friend blow up on an oil rig. She had such an emotional shock that she readily sent financial assistance to help cover medical expenses and other costs.

Our taxpayer who fell victim to this scam now owes the IRS over $60,000. Prior to 2017, she may have been able mitigate the loss through the theft loss deduction. Without access to that deduction, her withdrawal resulted in the large tax debt.

There are repercussions outside the tax field as well. Our client has been too ashamed to tell her family about the retirement withdrawal and resulting tax liability. She is alone in dealing with the stress of losing her retirement savings, as well as dealing with the resulting tax debt. As a lonely older adult, she was more susceptible to this type of scam, and she remains alone in dealing with the fallout.

This is just one example of how elderly taxpayers, and taxpayers in general, are not only victimized by scams, but must deal with the resulting tax consequences. In my decade plus at the Clinic, our clients have also been scammed out of money by people promising ownership in businesses that do not exist and other non-romanced based scams. Had the theft loss deduction been available, it could have alleviated some, if not all, of the tax consequence of these life alternating events. With the internet and new apps, including new payment apps, this is not a problem that will go away. These type of internet and app based scams are only increasing in frequency and the tax consequences can be as devasting as the initial loss of money.

Sincerely,

Christina Wease
Interim Director, Alvin L. Storrs Low-Income Taxpayer Clinic
Michigan State University College of law