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United States Senate

SPECIAL COMMITTEE ON AGING

WASHINGTON, DC 20510-6400

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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 billion⁹—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=e2f074246060>.

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.

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>.

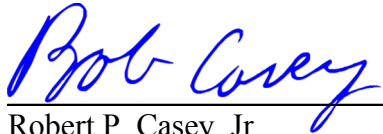
¹⁴ "Table 2.1. Returns with Itemized Deductions: Sources of Income, Adjustments, Itemized Deduction by Type, Exemptions, and Tax Items, by Size of Adjusted Gross Income, Tax Year 2017 (Filing Year 2018)," Internal Revenue Service, last accessed December 18, 2023, <https://www.irs.gov/pub/irs-soi/17in21id.xls>.

- 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,



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