
State of South Carolina
Department of Revenue
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P.O. Box 125, Columbia, South Carolina 29214

SC INFORMATION LETTER #13-17

SUBJECT: Identity Theft Coverage, Protection and Procedures – New Laws
(Administrative)

DATE: October 9, 2013

REFERENCE: House Bill 3710, Part IB, Section 97, Proviso 97.12 (Act No. 101)
House Bill 3710, Part IB, Section 117, Proviso 117.136 (Act No. 101)
House Bill 3710, Part IB, Section 118, Proviso 118.18 (Act No. 101)
House Bill 3711, Section 2 (Act No. 104)
House Bill 3248, Sections 1 & 2 (Act No. 15)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (2000); Supp. 2012
S.C. Code Ann. Section 1-23-10(4) (2005)
SC Revenue Procedure #09-3

SCOPE: An Information Letter is a written statement issued to the public to announce general information useful in complying with the laws administered by the Department. An Information Letter has no precedential value.

The South Carolina legislature has enacted provisions designed to provide or expand relief to persons potentially affected by identity theft or by breaches of data security at South Carolina agencies. The new provisions:

- Extend the time for identity theft protection and resolution services offered free of charge by the State;
- Allow some individuals an income tax deduction for their purchase of identity theft protection and resolution services;
- Provide potential reimbursement for persons whose identifying information has been obtained from a compromised computer system maintained by a state agency;
- Update laws that concern identity theft and related crimes, to make it easier for victims to initiate investigations and prosecute offenders; and
- Revise notification procedures in the event of a state agency data breach.

Taxpayer Protection Services – Extension of Coverage Free of Charge

The State is providing an additional year of identity theft protection and identity theft resolution services free of charge for eligible individuals, adult and minor dependents, or businesses whose financial information or personal identifying information was compromised as a result of the Department of Revenue's security breach of 2012.

These services will be available on October 24, 2013. The deadline to enroll is October 1, 2014. Credit protection services will end on October 31, 2014, unless the state chooses to extend the credit protection services contract. Additional information will be posted on the Department's website at: www.sctax.org.

Some Taxpayers May Claim an Income Tax Deduction for the Purchase of Identity Theft Protection and Resolution Services

A deduction from South Carolina taxable income is allowed for certain costs incurred to purchase identity theft protection or resolution services by contract or subscription. The deduction is allowed for:

- Individuals who filed a return (paper or electronic) with the Department of Revenue for any taxable year after 1997 and before 2013.
- Any person, including minor dependents, whose personally identifiable information was contained on such a return.

The deduction is equal to the actual costs for the contract or subscription incurred for the taxable year, up to \$300 for an individual taxpayer or \$1,000 for taxpayers filing joint returns or returns claiming dependents. Individuals cannot claim the deduction if (a) they deducted the same costs as a business expense or (b) they are enrolled in the identity theft protection and resolution services offered free of charge by the State.

Taxpayers May Be Able to Seek Reimbursement for Identity Theft Losses*

**Disclaimer: The following summary is offered for informational purposes only. For further details as to funding or administration of this reimbursement program, please contact the State Treasurer's Office (www.treasurer.sc.gov).*

The "Department of Revenue Identity Theft Reimbursement Fund" has been established for the current fiscal year, to be administered by the State Treasurer. It is designed to reimburse persons (whether an individual or a business) who suffer actual financial losses directly related to misuse of personally identifiable information obtained from a compromised computer maintained by a state agency, board, committee or commission.

The statute contains a list of expenses that are reimbursable and also provides information about expenses that are not reimbursable. Reimbursement is subject to availability of monies in the fund. A claim for reimbursement must be submitted to the State Treasurer on a form provided by the Treasurer. Each claim must be considered within 90 days after filing, and the Treasurer must give written notice to the claimant if the claim is denied in whole or in part.

The Treasurer's decision may be appealed to the Administrative Law Court. To appeal, the claimant must bring an action naming the Treasurer as the defendant within 90 days after the decision or, if the Treasurer fails to act on the claim, within 180 days of the filing of the claim.

The Laws Governing Identity Theft and Related Crimes Have Been Updated to Make It Easier to Initiate Investigations and Prosecute Offenders

The Consumer Protection Code has been updated to require a local law enforcement agency with jurisdiction over the actual legal residence of an identity theft victim to begin an investigation when the victim files a report. The agency no longer has the option to refer the matter to another law enforcement agency where the alleged crime was committed.

Further, under changes to the law made this year, the crimes of *identity fraud* (using another's personal identifying information to obtain employment or evade law enforcement) and financial identity fraud (obtaining or using personal identifying information to unlawfully target another's financial resources), may now be prosecuted either in the county in which the information is obtained and used or in the county in which the victim resided at the time the information was obtained or used. The definition of "Personal identifying information" for the purposes of these crimes has been expanded.

Changes Made to Procedures for Notification of South Carolina Residents in the Event of a State Agency Security Breach

If a state agency discovers any breach of data security, the agency must notify each South Carolina resident whose personal identifying information (as that term is defined in the data breach law) was, or is reasonably believed to have been, acquired by an unauthorized person. Notification must be made as expeditiously as possible and without unreasonable delay. However, notification may be delayed if a law enforcement agency determines that it hinders a criminal investigation. A delay in notification shall not exceed 72 hours after discovery, unless the agency requests and the Attorney General grants, in writing, additional delays of up to 72 hours each upon a determination that notification hinders a criminal investigation.

The notification requirement is not triggered if:

- The data is encrypted or redacted (unless an encryption key is also acquired).
- The information is lawfully obtained from publicly available information, or from federal, state or local government records lawfully made available to the general public.

The notice to the resident must include the agency’s contact information and a description of the information compromised, including specifics about the elements of personal information and private information believed to have been improperly acquired. If an agency does not provide the notice as required by the law, and the resident is harmed by the agency’s failure to do so, the resident may institute a civil action to recover damages, seek an injunction to force compliance with the law, and recover attorney’s fees and court costs if the resident is successful with these actions.

How to Find the Full Text of New Legislation

Below is a list of New Security and Identity Theft Legislation enacted during the 2013 legislative session.

These bills are listed in numeric order. The list of bills with a link to the full text of each act is on the Department’s website at:

<http://www.sctax.org/Tax+Policy/New+Security+and+Identity+Theft+Legislation.htm>

| BILL # | ACT # | SUBJECT |
|--|--------------|---|
| 3248 – Section 1 and 2 | 15 | Changes to Identity Theft Criminal Provisions |
| 3710 – Proviso 97.12 | 101 | Identity Theft Reimbursement Fund |
| 3710 – Proviso 117.136 | 101 | Notice of Data Security Breach |
| 3710 – Proviso 118.18 | 101 | Income Tax Deduction for Consumer Protection Services |
| 3711 – Section 2 | 104 | Identity Theft Services – Free Coverage Period Extended |