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PEOPLE'S OPENING BRIEF

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with C.A.R. 28(g).

It contains less than 9500 words.

The brief complies with C.A.R. 28(k).

It contains, under a separate heading, a concise statement of the applicable standard of appellate review and a citation to where the issue was raised and ruled on.

/s/ Kevin E. McReynolds

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ISSUES ON WHICH CERTIORARI WAS GRANTED

Whether the court of appeals erred in concluding Colorado's identity theft statute, section § 18-5-902, C.R.S. (2012), requires proof that the offender knew the information he exploited belonged to a real person, and if so, whether no rational juror could reasonably infer that an offender knew the Social Security number he used over a five-year period belonged to a real person.

STATEMENT OF THE CASE

This case involves Defendant's unauthorized use of a Broomfield resident's Social Security number. Defendant worked for a series of local restaurants, each time using personal identifying information that did not belong to him. This information belonged to S.G., who was questioned about unemployment fraud when Department of Labor records indicated she was receiving wages from a Thornton restaurant.

After a brief investigation, police found Defendant working at the Thornton restaurant, which he had provided with a fraudulent Social Security card. Records further showed that Defendant had used the

victim's Social Security number to obtain wages from at least four area restaurants over a five-year period.

Defendant did not testify, but argued the prosecution did not prove he knew the Social Security number he assumed belonged to a real person. The jury was unconvinced and convicted him.

The court of appeals vacated this conviction based on its conclusion that the identity theft statute requires proof of an offender's additional culpability for knowing the victim's personal identifying information actually belonged to a real person. *See People v. Perez*, 2013 COA 65 ¶¶ 18-21, 51 (May 9, 2013). Because the evidence did not show how Defendant obtained S.G.'s number or that a valid Social Security number was necessary for employment, the court vacated the jury's verdict – finding no rational juror could conclude that Defendant knew he exploited a real Social Security number as opposed to “a random series of nine numbers”. *See id.* ¶¶ 38-41, 51.

Both parts of this decision are incorrect.

STATEMENT OF THE FACTS

In 2008, S.G. lost her job. She was able to keep her young family afloat through unemployment benefits, food stamps, and Medicaid coverage for her four children (*see* Vol. 1 p. 2; CD 2/1/10 pp. 203-204).¹

On July 13, 2009, S.G.'s case worker called to tell her that she could lose her benefits and be subject to penalties because she was receiving wages from a Famous Dave's BBQ restaurant in Thornton (*see* Vol. 1 p. 2; CD 2/1/10 pp. 203-204; Exhibit 6). But S.G. never worked for this restaurant or received any of these wages (*see* CD 2/1/10 pp. 205-06). The next day, S.G. filed a complaint with the police (*see* Vol. 1 p. 2; CD 2/1/10 pp. 206-07; 217-18).

The investigating detective quickly determined that someone else had been using S.G.'s Social Security number to obtain wages from local restaurants since 2004 (*see* CD 2/1/10 pp. 217-19, 205-06; 2/2/10 pp. 51-56; Exhibit 6). The detective then contacted the Famous Dave's BBQ in Thornton (*see* CD 2/1/10 pp. 218-19).

¹ The transcript for the second day of trial (2/2/10) is included in the record as a hard copy.

The restaurant's manager immediately recognized S.G.'s Social Security number as the one Defendant had provided when he was hired (*see* CD 2/1/10 pp. 219-21; 2/2/10 pp. 8-9). Defendant's employment documents confirmed he used S.G.'s Social Security number and his file included a copy of a fraudulent Social Security card with his name and S.G.'s number (*see* Vol. 1 p. 2; CD 2/1/10 pp. 222-25; 2/2/10 pp. 6, 8-9; Exhibits 2, 2A (employment application), 3 (W-4 tax withholding form), 4 (I-9 Employment Eligibility Verification), 5 (copy of fraudulent Social Security card)). Defendant's employment application also confirmed that he was the one who had used S.G.'s Social Security number to work for at least four local restaurants as shown in Department of Labor records (*compare* Exhibit 6 (DOL wage report) *with* Exhibit 2A (Defendant's list of previous employers); *see* 2/2/10 pp. 51-56). Based on this evidence, the detective arrested Defendant for identity theft (*see* Vol. 1 pp. 2, 7-8; CD 2/1/10 p. 227).

The jury convicted Defendant, but the court of appeals vacated this verdict for insufficient evidence (*see* 2/2/10 pp. 200-01). *Perez*, 2013 COA 65 ¶ 51.

SUMMARY OF THE ARGUMENTS

The identity theft statute requires the prosecution to prove that the defendant “knowingly” engaged in prohibited conduct (*e.g.*, that he used identifying information or a financial device with the intent to obtain a benefit). It also requires the prosecution to prove that such information or device belonged to a real victim as opposed to being fictitious information, which is separately addressed through the previously existing offense of criminal impersonation. Contrary to the decision below, the legislature enacted the identity theft statute to protect the real victims of this crime – not merely to increase the punishment for those defendants who specifically knew they were victimizing real people.

Even if the identity theft statute required such proof, the evidence here supported the jury’s conclusion that Defendant knew that he was exploiting a real person’s information. In overturning this jury determination, the court of appeals inappropriately substituted its own judgment by finding the prosecution had not disproven Defendant’s supposed ignorance of the systems he exploited.

ARGUMENTS

I. The Identity Theft Statute Is Not Limited to where the Defendant Specifically Knew He was Victimizing a Real Person.

The primary issue before this Court is whether the court of appeals erred by interpreting the identity theft statute as only criminalizing defendants' exploitation of identifying information where they specifically knew such information belonged to real people.

As demonstrated below, this interpretation contravenes the purpose of the identity theft statute and its focus on protecting citizens from the extraordinary harms of this crime.

A. Standards of review.

Statutory interpretation is a question of law that is reviewed *de novo*. *See A.S. v. People*, 2013 CO 63 ¶ 10 (Oct. 28, 2013); *People v. Cross*, 127 P.3d 71, 73 (Colo. 2006). The purpose underlying such review is to effectuate the General Assembly's intent. *Cross*, 127 P.3d at 73. To do this, this Court must consider the language of the applicable statutory provisions as a whole to accord a consistent, harmonious and sensible effect. *See A.S.*, 2013 CO 63 ¶ 10. When

reviewing a comprehensive legislative scheme, reviewing courts must construe each part “to further the overarching legislative intent.” *Id.* at ¶ 11.

The criminal code should also be construed to promote the maximum fulfillment of its general purposes, including the reasonable differentiation between offenses. *See* § 18-1-102(1)(c), C.R.S. (2012); *see also* § 2-4-201, C.R.S. (2012) (statutes are presumed to be effective, feasible to execute, and to favor public interests over private interests).

But where the legislature’s intent is not clear from the language of the statutory scheme, reviewing courts consider factors such as legislative history, the consequences of a given construction, and the legislative ends achieved. *See A.S.*, 2013 CO 63 ¶ 11; *People v. Summers*, 208 P.3d 251, 254 (Colo. 2009); *see also* § 2-4-203, C.R.S. (2012).

As a general matter, the *mens rea* of a statute may apply “to conduct, or to circumstances, or to result, or to any combination thereof, but not necessarily all three.” *Cross*, 127 P.3d at 74. Section 18-1-503(4) provides for a presumption that a mental state applies to all of

the elements, but this presumption is rebutted where legislative intent provides otherwise. *Id.* When considering this presumption, reviewing courts must consider whether the legislature intended for the *mens rea* to apply to certain elements. *Id.*

B. Colorado’s identity theft statute required proof that Defendant knowingly used identifying information – not that he knew it belonged to a real person.

The portion of the identity theft statute interpreted by the court of appeals provides:

- (1) A person commits identity theft if he or she:
 - (a) Knowingly uses the personal identifying information, financial information, or financial device of another without permission or lawful authority with the intent to obtain cash, credit, property services, or any other thing of value or to make a financial payment . . .

§ 18-5-902(1)(a), C.R.S. (2012).²

² The *Perez* division declined to consider whether its interpretation would apply to other parts of this statute or if it was consistent with the statutory scheme as a whole. See 2013 COA 65 ¶ 20.

The *Perez* division found the “knowingly” *mens rea* in this section separately modified both the prohibited conduct (use of information/devices) and the circumstance (such information belonged to “another” actual person). *Perez*, 2013 COA 65 at ¶¶ 17-21. More specifically, this conclusion was based on the general presumption that a *mens rea* term applies to all subsequent terms and the court’s belief that unspecified portions of the legislative history supported this interpretation. *See id.* ¶¶ 19-21. The *Perez* division also relied on the interpretation of a “similarly structured” sentence enhancement statute for aggravated identity theft in *Flores-Figueroa v. United States*, 556 U.S. 646 (2009). *See id.* ¶¶ 22-30.

Critically, however, the *Perez* division’s misapplication of interpretive tools to a limited portion of the identity theft statute has resulted in a construction that contravenes the central purpose behind this law: to protect real victims from the significant harm caused by the unauthorized and unlawful use of their identifying information and financial devices.

First, the *Perez* division ignored how the identity theft statute fits into the overall statutory scheme, and specifically how it was designed to complement the previously existing criminal impersonation statute. Before the 2006 enactment of section 18-5-902 with its requirement that the exploited identifying information belonged to “another” actual person, the knowing use of identifying information with the intent to gain a benefit was already illegal under the criminal impersonation statute (F6). *See* § 18-5-113(1)(e), C.R.S. (2006).

The General Assembly recognized that the criminal impersonation statute did not effectively protect against the significant damage caused to real people who had their identifying information exploited. They created the identity theft statute to correct for this gap in Colorado law.

As discussed in the legislative history for both the 2006 enactment of the identity theft statute and its 2009 amendment, the General Assembly intended to differentiate the crimes of identity theft and criminal impersonation based on the *existence* of an actual victim – not because of any additional culpability shown by an offender who knew he was victimizing a real person.

In 2006, Colorado was one of the only states that did not have a statute criminalizing identity theft. *See* HB 06-1326, House Second Reading (4/11/06) at 3:09 (available at Colorado State Archives). In response, the General Assembly enacted HB 06-1326, which created the new felony offense of identity theft in § 18-5-902, C.R.S. (2006). *See* HB 06-1326 at 7-9 (copy attached).

Proponents of this bill testified extensively on the harm identity theft causes victims and the inadequacy of the criminal impersonation statute in combatting this harm. *See, e.g.,* HB 06-1326, House Judiciary Committee (2/23/06) at 8:20, 11:30, 25:00, 35:00, Senate Judiciary Committee (4/24/06) at 3:45, 6:05, 12:45, 13:45. One of the drafters of this statute specifically discussed the “of another” language in the identity theft statute as the key distinction between this offense and criminal impersonation because the victims of identity theft are real people rather than fictitious ones. *See* HB 06-1326, House Judiciary Committee (2/23/06) at 14:10. In discussing the elements of identity theft, the focus was on the deterrence needed to protect the real people being victimized rather than any additional culpability where

offenders specifically know that the information they are exploiting belongs to a real victim. *See id.* at 12:15, 14:10, House Second Reading (4/11/06) at 3:25, Senate Second Reading (5/2/06) at 1:16.

In 2009, the General Assembly amended the identity theft statutes through SB 09-093. Proponents reiterated the distinction between identity theft and criminal impersonation is that identity theft acknowledges the true victim of this crime – the person whose information is used. *See* SB 09-093, Senate Judiciary Committee (2/11/09 – Part I) at 27:30, 32:10, 51:55, 53:55 (available at Colorado State Archives).

Among other changes, SB 09-93 inserted new *mens rea* language in § 18-5-902(1)(a) that required proof that the offender “knowingly uses the personal identifying information . . . of another without permission or lawful authority **with the intent** to obtain cash, credit, property, services or any other thing of value . . .” *See* SB 09-093 at 1 (copy attached) (emphasis added). When discussing the *mens rea* components of § 18-5-902, there was no suggestion that this statute only applied to those offenders who knew that the information they used actually

belonged to a real person. *See* SB 09-093, Senate Judiciary Committee (2/11/09 – Part I) at 44:50, 58:29, (2/11/09 – Part II) at 17:50, 41:29.³

Thus, the *Perez* division ignored the purpose of the identity theft statute by ignoring the express basis for differentiating identity theft (use of actual victim information) from criminal impersonation (use of fictional information). As discussed in the House Judiciary Committee, this statute was designed to address the significant harm to real victims and the difficulty of tracking and prosecuting identity theft rings on racketeering charges or protecting citizens with the inadequate penalties for criminal impersonation. *See* HB 06-1326, House Judiciary Committee (2/23/06) at 8:20, 10:00, 12:15, 14:10.

The *Perez* division eviscerated this legislative purpose in a manner that actually promotes identity theft rings because each member of these groups can now claim they did not *know* the identifying information belonged to a real person. Thus after *Perez*,

³ Moreover, the General Assembly's insertion of a new *mens rea* requirement in the middle of § 18-5-902(1)(a) calls into question the *Perez* division's interpretation that the legislature intended the "knowingly" *mens rea* to apply to each subsequent term in this section.

nearly all Colorado victims are left to rely on the same inadequate statutes that prompted the legislature to enact the identity theft statute in the first place.

Because the General Assembly intended to apply identity theft based on the *existence* of real victims and the harm they suffer, the *Perez* division erred by relying on a presumption to apply the “knowingly” *mens rea* to both the conduct and circumstance in section 18-5-902(1)(a). *See also Cross*, 127 P.3d at 77-78 (rejecting this presumption and finding the “knowingly” *mens rea* applied to the conduct element of the stalking statute, but not the circumstance or result elements); *Gorman v. People*, 19 P.3d 662, 667 (Colo. 2000) (holding the “knowingly” *mens rea* for contributing to delinquency of a minor does not apply to the circumstance element regarding the victim’s age); *Copeland v. People*, 2 P.3d 1283, 1287 (Colo. 2000) (holding the “knowingly” *mens rea* in arson did not apply to the result element regarding the consequences of starting or maintaining a fire); *People v. Noble*, 635 P.3d 203, 210 (Colo. 1981) (holding the “knowingly” *mens rea* in child abuse only applied to the defendant’s general awareness of the

abusive nature of the conduct, not that it was likely to cause the proscribed result).

Second, both the nature of Colorado's identity theft statute and its legislative context demonstrate that the *Perez* division erred by relying on *Flores-Figueroa*. The aggravated identity theft statute at issue in *Flores-Figueroa* was a sentence enhancement statute, and was therefore specifically designed to increase punishment based on an offender's culpability. By contrast, section 18-5-902 is a substantive offense designed to protect citizens from the significant harm caused when offenders exploit real people's identifying information. Put simply, it is one thing to presume that knowing victimization is necessary to enhance an offender's sentence, but it is quite another to conclude an offender's knowing exploitation of personal identifying information is not a crime unless he knew it belonged to a real person.

Moreover, as both the majority and concurrence in *Flores-Figueroa* recognized, its reasoning should not be applied to all similarly structured statutes because the meaning of a given statute depends on the context. *Flores-Figueroa*, 556 U.S. at 659-61 (Alito, J., concurring);

id. at 652, 654-55 (agreeing with Justice Alito’s reasoning, but finding no special context applied in this particular case); *see also e.g., United States v. Cox*, 577 F.3d 833, 837-38 (7th Cir. 2009) (recognizing the contextual limitations of *Flores-Figueroa* and holding the term “knowingly” does not require proof that an offender knew the victim was under the age of 18 when interpreting the similarly structured 18 U.S.C. § 2421)).

In *Flores-Figueroa*, unlike in this case, the legislative context supported the majority’s view that the federal aggravated identity theft sentence enhancer targeted cases where the offender knew the exploited information belonged to a real person. 556 U.S. at 657. The congressional hearings on this statute focused on instances of identity theft, such as “dumpster diving”, where the offender would necessarily know the exploited information belonged to a real person. *See id.* at 655-57.

By contrast, Colorado’s legislative history shows the General Assembly focused instead on the existence of real victims in identity theft, the significant harm they suffer, and the inadequacy of the

criminal impersonation statute that targeted a defendant's use of fictitious information. Again, this legislative context shows the General Assembly's goal was to deter the exploitation of real victim's information, not to increase the offense level for those offenders who specifically knew they were victimizing real people.

Third, the practical implications of the *Perez* division's interpretation also undermine its narrow construction. For example, if a defendant uses 100, 1,000 or even 100,000 separate credit cards (financial devices) each for a single transaction with the hope that some of them are valid and will work, it would be virtually impossible to prove this was identity theft under the *Perez* division's interpretation. Despite the obvious harm suffered by the owners of the valid cards, the prosecution would not be able to prove the defendant "knew" each of these cards belonged to a real, rather than a fictitious person. This is particularly true given the *Perez* division pointed to a defendant's repeated testing of the same victim information as practical solution for its new requirement for the prosecution to prove the offender knew he exploited a real victim's information. *See Perez*, 2013 COA 65 ¶¶ 46-47.

The unintended consequences of the *Perez* division's narrow view become even more pronounced when considering the other parts of section 18-5-902, which are designed to prohibit among other things the use of identifying information to apply for credit or government-issued documents. *See, e.g.*, § 18-5-902(1)(d), (e). Again, it would be practically impossible to prosecute an offender for identity theft where he applied for hundreds of credit cards or government-issued documents using a block of information because of the difficulty of proving the offender's actual knowledge that each piece of information that he exploited belonged to a real person. Any real people whose information was used in this way would have their credit destroyed, regardless of the defendant's knowledge, and this is why the General Assembly focused on the *existence* of such victims when it enacted the identity theft statute.

Accordingly, this Court should reverse the decision below and hold the identity theft statute does not require proof that a defendant knows the identifying information or device he is exploiting belongs to a real person.

II. The Court of Appeals Erred by Substituting Its Own View of the Evidence for the Jury's.

Even if the *Perez* division's interpretation of the identity theft statute was correct, the court of appeals misapplied the sufficiency of the evidence analysis by reweighing the evidence and requiring the prosecution disprove Defendant's supposed ignorance of the systems he exploited when using S.G.'s Social Security number on work eligibility and tax withholding forms to successfully obtain wages from at least four local restaurants.

A. Standards of review.

The proper analysis for sufficiency of the evidence is the *Bennett*⁴ test, which considers “whether the relevant evidence, both direct and circumstantial, when viewed as a whole and in the light most favorable to the prosecution, is substantial and sufficient to support a conclusion by a reasonable mind that the defendant is guilty of the charge beyond a reasonable doubt.” *Clark v. People*, 232 P.3d 1287, 1291, 1288-89 (Colo. 2010) (internal quotations and citations omitted). Importantly, it

⁴ *People v. Bennett*, 183 Colo. 125, 515 P.2d 466 (1973).

does not matter that a reviewing court might have reached a different conclusion, but only that there is a logical connection between the facts established and the conclusion inferred. *Id.* at 1291-92; *Bennett*, 515 P.2d at 469 (stating the prosecution need not “exclude every reasonable hypotheses other than guilt” or disprove the defendant’s theory in order for there to be sufficient evidence).

B. There was sufficient evidence to show a logical connection between Defendant’s repeated exploitation of a local citizen’s Social Security number and his knowledge that this was a valid number that belonged to someone.

At trial, the parties specifically argued over whether the evidence proved that Defendant knew the Social Security number he had consistently used over a five-year period belonged to a real person (*see* 2/2/10 pp. 149-54, 157-59, 177-80 (prosecution closing arguments on this issue), 163-64, 170-71 (defense closing arguments)). The jury rejected Defendant’s claims and convicted him.

The court of appeals overturned this jury determination based on its own concerns from the lack of specific evidence showing how

Defendant obtained S.G.'s Social Security number, that a valid Social Security number is required for employment, or that Defendant knew about such requirements or about the relationship between supplying personally identifying information to employers and resultant tax withholdings. *See Perez*, 2013 COA 65 at ¶¶ 40-42, 51.

But the *Perez* division misapplied the *Bennett* test by inappropriately weighing the evidence and requiring the prosecution disprove Defendant's theory that he was ignorant of the systems he exploited each and every time he provided S.G.'s Social Security number to an employer. Instead, the *Bennett* test only requires that the evidence presented a logical connection between the facts and the conclusion inferred. Here, there was sufficient evidence from which a rational juror could infer that Defendant knew the Social Security number he assumed belonged to someone.

First, that Defendant obtained and exploited a local victim's Social Security number is circumstantial evidence that he knew it was not a random series of numbers. It is logical that Defendant used a local victim's Social Security number because it would be less likely to be

questioned. By contrast, it is beyond speculative to think Defendant obtained a random series of nine digits that just happened to correspond to a real person with legal work status a few miles away.

Second, there was direct evidence that the Famous Dave's payroll system would only accept valid Social Security numbers that belonged to real people and that this restaurant, like all employers, was required to obtain a Social Security number and proof of work status (*see* 2/2/10 pp. 19, 6-8; *see also* Exhibits 4 (Defendant's I-9 Employment Eligibility Verification), 5 (copy of Defendant's fraudulent Social Security Card taken in conjunction with form I-9), 3 (Defendant's W-4 tax withholding form)).⁵ It was therefore logical that Defendant knew he needed to supply a valid Social Security number that payroll systems would not reject, particularly because the provision of Social Security numbers for

⁵ The manager of this restaurant admitted she did not verify that the Social Security numbers matched the names of the employees (2/2/10 pp. 25-26).

employment is a requirement of federal law⁶ and the prosecution was not required to disprove Defendant's supposed ignorance of these laws.

Third, Defendant used the victim's Social Security number on his IRS tax withholding form and every paycheck he received was deducted based on this form (*see* Exhibits 3 (W-4); 6 (DOL wage reports for S.G.'s Social Security number)). Because every employee in the United States is subject to payroll deductions and because jurors can properly rely on their own common experiences,⁷ the prosecution did not need to specifically prove the legal relationship between tax withholdings and Social Security numbers. *See, e.g.*, 26 U.S.C. §§ 6109(a)(3) & (d), 6721,

⁶ *See, e.g.*, 26 U.S.C. § 6109(a)(3) & (d) (requiring employers to provide valid Social Security numbers of their employees); 8 U.S.C. § 1324a(b)(1)(C) (identifying social security cards as “[d]ocuments evidencing employment authorization”); *Abel Verdon Constr. v. Rivera*, 348 S.W.3d 749, 751 n. 1 (Ky. 2011) (recognizing that aliens are only authorized to work in the United States if they possess “a valid Social Security card or other documentation of authorization for employment”); *Garcia-Lopez v. Bellsouth Telcoms.*, 2010 U.S. Dist. LEXIS 44741 at **18-19 (S.D. Miss. 2010) (“In order to be authorized to work in the United States, IRCS provides that an alien must have a valid social security card”).

⁷ *See, e.g., People v. Pena-Rodriguez*, 2012 COA 193 ¶¶ 34-35 (Nov. 8, 2012); COLJI-Crim. No. E:01 (2008) (“Finally, you should consider all the evidence in light of your observations and experience in life.”).

6722, 6723; 8 U.S.C. § 1324a(b)(1)(C); *Weber v. Leaseway Dedicated Logistics*, 5 F.Supp.2d 1219, 1222 (D. Kan. 1998) (holding the IRS rather than the employer imposes the legal requirement that employees furnish Social Security numbers in order to obtain employment); *see also* Excerpts from Employer's Tax Guide, IRS (2012) (copy attached). Thus, a juror could logically conclude Defendant knew the tax deductions from his paychecks were being attributed to the true owner of the Social Security number he had provided on the tax withholding form – particularly because the wage reporting evidence showed this is exactly what happened (*see* Exhibit 6; 2/2/10 pp. 44-57).

Fourth and finally, the Defendant's consistent use of the victim's Social Security number with at least four employers– and their respective payroll systems – demonstrates he successfully tested the validity of this number (*See* Exhibits 2A, 6 (showing Defendant's claimed work history corresponded to wages reported under S.G.'s Social Security number since 2004)). This provides circumstantial evidence that Defendant knew he was using valid identifying information because it was consistently accepted. Here, any

uncertainty Defendant may have had about the validity of the S.G.'s Social Security number disappeared after he successfully used it to obtain wages from multiple different employers, including at least one with a payroll system that rejected counterfeit numbers.

Thus, the court of appeals fundamentally misapplied the “substantial evidence” test by ignoring the jury’s logical conclusions and instead theorizing that the Defendant knew he needed to provide a Social Security number, but at the same time had no understanding of how this number was used, that the tax deductions in his paychecks related to his use of this number on a tax withholding form he signed under penalty of perjury, or that a Social Security number that was accepted by every employer and every payroll system for five years corresponded to a real person (who just happened to live nearby).

CONCLUSION

For these reasons, this Court should reverse the decision below and hold: (1) the identity theft statute does not require proof that a defendant specifically knows the identifying information he is exploiting belongs to a real person; and (2) there was sufficient evidence to sustain the jury's conviction below.

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CERTIFICATE OF SERVICE

This is to certify that I have duly served the within **PEOPLE’S
OPENING BRIEF** upon **ANDREW C. HEHER**, Deputy State Public
Defender, via Integrated Colorado Courts E-filing System (ICCES) on
March 25, 2014.

/s/ C. D. Moretti

C.R.S. 18-5-902

This document reflects changes current through all laws passed at the Second Regular and First Extraordinary Sessions of the Sixty-Eighth General Assembly of the State of Colorado 2012 and Constitutional and Statutory amendments approved at the General Election on November 6, 2012

Colorado Revised Statutes > TITLE 18. > ARTICLE 5. > PART 9.**18-5-902. Identity theft**

- (1) A person commits identity theft if he or she:
 - (a) Knowingly uses the personal identifying information, financial identifying information, or financial device of another without permission or lawful authority with the intent to obtain cash, credit, property, services, or any other thing of value or to make a financial payment;
 - (b) Knowingly possesses the personal identifying information, financial identifying information, or financial device of another without permission or lawful authority, with the intent to use or to aid or permit some other person to use such information or device to obtain cash, credit, property, services, or any other thing of value or to make a financial payment;
 - (c) With the intent to defraud, falsely makes, completes, alters, or utters a written instrument or financial device containing any personal identifying information or financial identifying information of another;
 - (d) Knowingly possesses the personal identifying information or financial identifying information of another without permission or lawful authority to use in applying for or completing an application for a financial device or other extension of credit;
 - (e) Knowingly uses or possesses the personal identifying information of another without permission or lawful authority with the intent to obtain a government-issued document;
or
 - (f) (Deleted by amendment, L. 2009, *(SB 09-093)*, *ch. 326*, *p. 1737*, *§ 1*, effective July 1, 2009.)
- (2) Identity theft is a class 4 felony.
- (3) The court shall be required to sentence the defendant to the department of corrections for a term of at least the minimum of the presumptive range and may sentence the defendant to a maximum of twice the presumptive range if:
 - (a) The defendant is convicted of identity theft or of attempt, conspiracy, or solicitation to commit identity theft; and
 - (b) The defendant has a prior conviction for a violation of this part 9 or a prior conviction for an offense committed in any other state, the United States, or any other territory subject to the jurisdiction of the United States that would constitute a violation of this part 9 if committed in this state, or for attempt, conspiracy, or solicitation to commit a violation of this part 9 or for attempt, conspiracy, or solicitation to commit an offense in another jurisdiction that would constitute a violation of this part 9 if committed in this state.

NOTE: This bill has been prepared for the signature of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.



HOUSE BILL 06-1326

BY REPRESENTATIVE(S) Crane, Riesberg, Liston, Coleman, Schultheis, Marshall, Butcher, Todd, Balmer, Benefield, Berens, Borodkin, Boyd, Cadman, Carroll T., Clapp, Cloer, Curry, Decker, Frangas, Gardner, Green, Hall, Harvey, Hefley, Hodge, Hoppe, Jahn, Kerr J., King, Knoedler, Larson, Lindstrom, Lundberg, Massey, May M., McCluskey, McFadyen, McGihon, McKinley, Merrifield, Paccione, Penry, Rose, Soper, Stafford, Stengel, Sullivan, Vigil, Welker, White, Witwer, Carroll M., Garcia, Kerr A., Madden, Romanoff, and Solano;
also SENATOR(S) Grossman, Spence, Brophy, Hanna, Kester, May R., Shaffer, Taylor, Bacon, Dyer, Evans, Fitz-Gerald, Gordon, Groff, Isgar, Johnson, Jones, Keller, Lamborn, Mitchell, Owen, Teck, Tochtrop, Traylor, Tupa, Veiga, Wiens, Williams, and Windels.

CONCERNING IDENTITY THEFT, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 18-1-202, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

18-1-202. Place of trial. (13) IF A PERSON COMMITS IDENTITY THEFT AS DESCRIBED IN SECTION 18-5-902, IDENTITY THEFT IS COMMITTED

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

AND THE OFFENDER MAY BE TRIED IN ANY COUNTY WHERE A PROHIBITED ACT WAS COMMITTED, IN ANY COUNTY WHERE AN ACT IN FURTHERANCE OF THE OFFENSE WAS COMMITTED, OR IN ANY COUNTY WHERE THE VICTIM RESIDES DURING ALL OR PART OF THE OFFENSE. FOR PURPOSES OF THIS SUBSECTION (13), A BUSINESS ENTITY RESIDES IN ANY COUNTY IN WHICH IT MAINTAINS A PHYSICAL LOCATION.

SECTION 2. 18-1-202 (7) (b) (II), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUB-SUBPARAGRAPH to read:

18-1-202. Place of trial. (7) (b) (II) The provisions of subparagraph (I) of this paragraph (b) shall apply to the following offenses:

(W) IDENTITY THEFT, AS DEFINED IN SECTION 18-5-902.

SECTION 3. Repeal. 18-5-117, Colorado Revised Statutes, is repealed as follows:

18-5-117. Unlawful possession of personal identifying information. ~~(1) A person shall not possess the personal identifying information of another person with the intent to use the information, or to aid or permit another to use the information, to unlawfully gain a benefit for himself or herself or another person, or to injure or defraud another person.~~

~~(2) Unlawful possession of personal identifying information is a class 1 misdemeanor.~~

~~(3) As used in this section, "personal identifying information" shall have the same meaning as provided in section 6-1-713 (2), C.R.S., but shall not include a financial transaction device as defined in section 18-5-701 (3).~~

SECTION 4. Repeal. 18-5-119, Colorado Revised Statutes, is repealed as follows:

18-5-119. Theft of personal identifying information. ~~(1)(a) A person who, with the intent to defraud another person of personal identifying information, unlawfully enters a trash receptacle and takes documents from that trash receptacle commits theft of personal identifying information.~~

~~(b) For purposes of this section, "personal identifying information" shall have the same meaning as provided in section 6-1-713 (2), C.R.S.; except that "personal identifying information" shall not include a financial transaction device, as defined in section 18-5-701 (3).~~

~~(2) Theft of personal identifying information is a class 1 misdemeanor.~~

SECTION 5. Repeal. 18-5-120, Colorado Revised Statutes, is repealed as follows:

18-5-120. Gathering personal information by deception.

~~(1) (a) A person commits gathering personal information by deception if, without permission or lawful authority, he or she knowingly makes or conveys a materially false statement over a computer or computer network, over the telephone, or by any other electronic medium with the intent to obtain, record, or access the personal identifying information of another.~~

~~(b) For purposes of this section, "personal identifying information" shall have the same meaning as provided in section 6-1-713 (2), C.R.S.; except that "personal identifying information" shall not include a financial transaction device, as defined in section 18-5-701 (3).~~

~~(2) Gathering personal information by deception is a class 1 misdemeanor.~~

SECTION 6. Repeal. 18-5-703, Colorado Revised Statutes, is repealed as follows:

18-5-703. Criminal possession of a financial transaction device.

~~(1) A person commits criminal possession of a financial transaction device if he has in his possession or under his control any financial transaction device, with the intent to defraud, or any financial transaction device which he knows or reasonably should know to be lost, stolen, or delivered under a mistake as to the identity or address of the account holder.~~

~~(2) Criminal possession of one financial transaction device is a class 1 misdemeanor.~~

~~(3) Criminal possession of two or more financial transaction devices~~

~~is a class 6 felony.~~

~~(4) Criminal possession of four or more financial transaction devices issued to different account holders is a class 5 felony.~~

SECTION 7. Repeal. 18-5-704, Colorado Revised Statutes, is repealed as follows:

18-5-704. Sale or possession for sale of a financial transaction device. ~~(1) A person commits a class 5 felony if, with intent to defraud, he sells, or has in his possession or under his control with the intent to deliver, circulate, or sell, any financial transaction device which he knows or reasonably should know to be lost, delivered under a mistake as to the identity or address of the account holder, stolen, forged, altered, or counterfeited.~~

~~(2) A person commits a class 3 felony if, with intent to defraud, he sells, or has in his possession or under his control with the intent to deliver, circulate, or sell, two or more financial transaction devices which he knows or reasonably should know to be lost, delivered under a mistake as to the identity or address of the account holder, stolen, forged, altered, or counterfeited.~~

SECTION 8. Article 5 of title 18, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PART to read:

PART 9 IDENTITY THEFT AND RELATED OFFENSES

18-5-901. Definitions. AS USED IN THIS PART 9, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "ACCOUNT HOLDER" MEANS ANY PERSON OR BUSINESS ENTITY NAMED ON OR ASSOCIATED WITH THE ACCOUNT OR NAMED ON THE FACE OF A FINANCIAL DEVICE TO WHOM OR FOR WHOSE BENEFIT THE FINANCIAL DEVICE IS ISSUED BY AN ISSUER.

(2) "EXTENSION OF CREDIT" MEANS ANY LOAN OR AGREEMENT, EXPRESS OR IMPLIED, WHEREBY THE REPAYMENT OR SATISFACTION OF ANY DEBT OR CLAIM, WHETHER ACKNOWLEDGED OR DISPUTED, VALID OR

INVALID, AND HOWEVER ARISING, MAY OR WILL BE DEFERRED.

(3) To "FALSELY ALTER" A WRITTEN INSTRUMENT OR FINANCIAL DEVICE MEANS TO CHANGE A WRITTEN INSTRUMENT OR FINANCIAL DEVICE WITHOUT THE AUTHORITY OF ANYONE ENTITLED TO GRANT SUCH AUTHORITY, WHETHER IT BE IN COMPLETE OR INCOMPLETE FORM, BY MEANS OF ERASURE, OBLITERATION, DELETION, INSERTION OF NEW MATTER, TRANSPOSITION OF MATTER, OR ANY OTHER MEANS, SO THAT THE WRITTEN INSTRUMENT OR FINANCIAL DEVICE IN ITS THUS ALTERED FORM FALSELY APPEARS OR PURPORTS TO BE IN ALL RESPECTS AN AUTHENTIC CREATION OF OR FULLY AUTHORIZED BY ITS OSTENSIBLE MAKER.

(4) To "FALSELY COMPLETE" A WRITTEN INSTRUMENT OR FINANCIAL DEVICE MEANS:

(a) TO TRANSFORM AN INCOMPLETE WRITTEN INSTRUMENT OR FINANCIAL DEVICE INTO A COMPLETE ONE BY ADDING, INSERTING, OR CHANGING MATTER WITHOUT THE AUTHORITY OF ANYONE ENTITLED TO GRANT THAT AUTHORITY, SO THAT THE COMPLETE WRITTEN INSTRUMENT OR FINANCIAL DEVICE FALSELY APPEARS OR PURPORTS TO BE IN ALL RESPECTS AN AUTHENTIC CREATION OF OR FULLY AUTHORIZED BY ITS OSTENSIBLE MAKER; OR

(b) TO TRANSFORM AN INCOMPLETE WRITTEN INSTRUMENT OR FINANCIAL DEVICE INTO A COMPLETE ONE BY ADDING OR INSERTING MATERIALLY FALSE INFORMATION OR ADDING OR INSERTING A MATERIALLY FALSE STATEMENT. A MATERIALLY FALSE STATEMENT IS A FALSE ASSERTION THAT AFFECTS THE ACTION, CONDUCT, OR DECISION OF THE PERSON WHO RECEIVES OR IS INTENDED TO RECEIVE THE ASSERTED INFORMATION IN A MANNER THAT DIRECTLY OR INDIRECTLY BENEFITS THE PERSON MAKING THE ASSERTION.

(5) To "FALSELY MAKE" A WRITTEN INSTRUMENT OR FINANCIAL DEVICE MEANS TO MAKE OR DRAW A WRITTEN INSTRUMENT OR FINANCIAL DEVICE, WHETHER IT BE IN COMPLETE OR INCOMPLETE FORM, THAT PURPORTS TO BE AN AUTHENTIC CREATION OF ITS OSTENSIBLE MAKER, BUT THAT IS NOT, EITHER BECAUSE THE OSTENSIBLE MAKER IS FICTITIOUS OR BECAUSE, IF REAL, THE OSTENSIBLE MAKER DID NOT AUTHORIZE THE MAKING OR THE DRAWING OF THE WRITTEN INSTRUMENT OR FINANCIAL DEVICE.

(6) "FINANCIAL DEVICE" MEANS ANY INSTRUMENT OR DEVICE THAT CAN BE USED TO OBTAIN CASH, CREDIT, PROPERTY, SERVICES, OR ANY OTHER THING OF VALUE OR TO MAKE FINANCIAL PAYMENTS, INCLUDING BUT NOT LIMITED TO:

(a) A CREDIT CARD, BANKING CARD, DEBIT CARD, ELECTRONIC FUND TRANSFER CARD, OR GUARANTEED CHECK CARD;

(b) A CHECK;

(c) A NEGOTIABLE ORDER OF WITHDRAWAL;

(d) A SHARE DRAFT; OR

(e) A MONEY ORDER.

(7) "FINANCIAL IDENTIFYING INFORMATION" MEANS ANY OF THE FOLLOWING THAT CAN BE USED, ALONE OR IN CONJUNCTION WITH ANY OTHER INFORMATION, TO OBTAIN CASH, CREDIT, PROPERTY, SERVICES, OR ANY OTHER THING OF VALUE OR TO MAKE A FINANCIAL PAYMENT:

(a) A PERSONAL IDENTIFICATION NUMBER, CREDIT CARD NUMBER, BANKING CARD NUMBER, CHECKING ACCOUNT NUMBER, DEBIT CARD NUMBER, ELECTRONIC FUND TRANSFER CARD NUMBER, GUARANTEED CHECK CARD NUMBER, OR ROUTING NUMBER; OR

(b) A NUMBER REPRESENTING A FINANCIAL ACCOUNT OR A NUMBER AFFECTING THE FINANCIAL INTEREST, STANDING, OR OBLIGATION OF OR TO THE ACCOUNT HOLDER.

(8) "GOVERNMENT" MEANS:

(a) THE UNITED STATES AND ITS DEPARTMENTS, AGENCIES, OR SUBDIVISIONS;

(b) A STATE, COUNTY, MUNICIPALITY, OR OTHER POLITICAL UNIT AND ITS DEPARTMENTS, AGENCIES, OR SUBDIVISIONS; AND

(c) A CORPORATION OR OTHER ENTITY ESTABLISHED BY LAW TO CARRY OUT GOVERNMENTAL FUNCTIONS.

(9) "ISSUER" MEANS A PERSON, A BANKING, FINANCIAL, OR BUSINESS INSTITUTION, OR A CORPORATION OR OTHER BUSINESS ENTITY THAT ASSIGNS FINANCIAL RIGHTS BY ACQUIRING, DISTRIBUTING, CONTROLLING, OR CANCELLING AN ACCOUNT OR A FINANCIAL DEVICE.

(10) "NUMBER" INCLUDES, WITHOUT LIMITATION, ANY GROUPING OR COMBINATION OF LETTERS, NUMBERS, OR SYMBOLS.

(11) "OF ANOTHER" MEANS THAT OF A NATURAL PERSON, LIVING OR DEAD, OR A BUSINESS ENTITY AS DEFINED IN SECTION 16-3-301.1 (11) (b), C.R.S.

(12) "PERSONAL IDENTIFICATION NUMBER" MEANS A NUMBER ASSIGNED TO AN ACCOUNT HOLDER BY AN ISSUER TO PERMIT AUTHORIZED USE OF AN ACCOUNT OR FINANCIAL DEVICE.

(13) "PERSONAL IDENTIFYING INFORMATION" MEANS INFORMATION THAT MAY BE USED, ALONE OR IN CONJUNCTION WITH ANY OTHER INFORMATION, TO IDENTIFY A SPECIFIC INDIVIDUAL, INCLUDING BUT NOT LIMITED TO A NAME; A DATE OF BIRTH; A SOCIAL SECURITY NUMBER; A PASSWORD; A PASS CODE; AN OFFICIAL, GOVERNMENT-ISSUED DRIVER'S LICENSE OR IDENTIFICATION CARD NUMBER; A GOVERNMENT PASSPORT NUMBER; BIOMETRIC DATA; OR AN EMPLOYER, STUDENT, OR MILITARY IDENTIFICATION NUMBER.

(14) "UTTER" MEANS TO TRANSFER, PASS, OR DELIVER, OR TO ATTEMPT OR CAUSE TO BE TRANSFERRED, PASSED, OR DELIVERED, TO ANOTHER PERSON A WRITTEN INSTRUMENT OR FINANCIAL DEVICE, ARTICLE, OR THING.

(15) "WRITTEN INSTRUMENT" MEANS A PAPER, DOCUMENT, OR OTHER INSTRUMENT CONTAINING WRITTEN OR PRINTED MATTER OR THE EQUIVALENT THEREOF, USED FOR PURPOSES OF RECITING, EMBODYING, CONVEYING, OR RECORDING INFORMATION, AND ANY MONEY, TOKEN, STAMP, SEAL, BADGE, OR TRADEMARK OR ANY EVIDENCE OR SYMBOL OF VALUE, RIGHT, PRIVILEGE, OR IDENTIFICATION, THAT IS CAPABLE OF BEING USED TO THE ADVANTAGE OR DISADVANTAGE OF ANOTHER.

18-5-902. Identity theft. (1) A PERSON COMMITS IDENTITY THEFT IF HE OR SHE:

(a) KNOWINGLY USES THE PERSONAL IDENTIFYING INFORMATION, FINANCIAL IDENTIFYING INFORMATION, OR FINANCIAL DEVICE OF ANOTHER WITHOUT PERMISSION OR LAWFUL AUTHORITY TO OBTAIN CASH, CREDIT, PROPERTY, SERVICES, OR ANY OTHER THING OF VALUE OR TO MAKE A FINANCIAL PAYMENT;

(b) KNOWINGLY POSSESSES THE PERSONAL IDENTIFYING INFORMATION, FINANCIAL IDENTIFYING INFORMATION, OR FINANCIAL DEVICE OF ANOTHER WITHOUT PERMISSION OR LAWFUL AUTHORITY, WITH THE INTENT TO USE OR TO AID OR PERMIT SOME OTHER PERSON TO USE SUCH INFORMATION OR DEVICE TO OBTAIN CASH, CREDIT, PROPERTY, SERVICES, OR ANY OTHER THING OF VALUE OR TO MAKE A FINANCIAL PAYMENT;

(c) WITH THE INTENT TO DEFRAUD, FALSELY MAKES, COMPLETES, ALTERS, OR UTTERS A WRITTEN INSTRUMENT OR FINANCIAL DEVICE CONTAINING ANY PERSONAL IDENTIFYING INFORMATION OR FINANCIAL IDENTIFYING INFORMATION OF ANOTHER;

(d) KNOWINGLY POSSESSES THE PERSONAL IDENTIFYING INFORMATION OR FINANCIAL IDENTIFYING INFORMATION OF ANOTHER WITHOUT PERMISSION OR LAWFUL AUTHORITY TO USE IN APPLYING FOR OR COMPLETING AN APPLICATION FOR A FINANCIAL DEVICE OR OTHER EXTENSION OF CREDIT;

(e) KNOWINGLY USES OR POSSESSES THE PERSONAL IDENTIFYING INFORMATION OF ANOTHER WITHOUT PERMISSION OR LAWFUL AUTHORITY WITH THE INTENT TO OBTAIN A GOVERNMENT-ISSUED DOCUMENT; OR

(f) ATTEMPTS, CONSPIRES WITH ANOTHER, OR SOLICITS ANOTHER TO COMMIT ANY OF THE ACTS SET FORTH IN PARAGRAPHS (a) TO (e) OF THIS SUBSECTION (1).

(2) IDENTITY THEFT IS A CLASS 4 FELONY.

(3) THE COURT SHALL BE REQUIRED TO SENTENCE THE DEFENDANT TO THE DEPARTMENT OF CORRECTIONS FOR A TERM OF AT LEAST THE MINIMUM OF THE PRESUMPTIVE RANGE AND MAY SENTENCE THE DEFENDANT TO A MAXIMUM OF TWICE THE PRESUMPTIVE RANGE IF:

(a) THE DEFENDANT IS CONVICTED OF IDENTITY THEFT; AND

(b) THE DEFENDANT HAS A PRIOR CONVICTION FOR A VIOLATION OF THIS PART 9 OR A PRIOR CONVICTION FOR AN OFFENSE COMMITTED IN ANY OTHER STATE, THE UNITED STATES, OR ANY OTHER TERRITORY SUBJECT TO THE JURISDICTION OF THE UNITED STATES THAT WOULD CONSTITUTE A VIOLATION OF THIS PART 9 IF COMMITTED IN THIS STATE.

18-5-903. Criminal possession of a financial device. (1) A PERSON COMMITS CRIMINAL POSSESSION OF A FINANCIAL DEVICE IF THE PERSON HAS IN HIS OR HER POSSESSION OR UNDER HIS OR HER CONTROL ANY FINANCIAL DEVICE THAT THE PERSON KNOWS, OR REASONABLY SHOULD KNOW, TO BE LOST, STOLEN, OR DELIVERED UNDER MISTAKE AS TO THE IDENTITY OR ADDRESS OF THE ACCOUNT HOLDER.

(2) (a) CRIMINAL POSSESSION OF ONE FINANCIAL DEVICE IS A CLASS 1 MISDEMEANOR.

(b) CRIMINAL POSSESSION OF TWO OR MORE FINANCIAL DEVICES IS A CLASS 6 FELONY.

(c) CRIMINAL POSSESSION OF FOUR OR MORE FINANCIAL DEVICES, OF WHICH AT LEAST TWO ARE ISSUED TO DIFFERENT ACCOUNT HOLDERS, IS A CLASS 5 FELONY.

18-5-904. Gathering identity information by deception. (1) A PERSON COMMITS GATHERING IDENTITY INFORMATION BY DECEPTION IF HE OR SHE KNOWINGLY MAKES OR CONVEYS A MATERIALLY FALSE STATEMENT, WITHOUT PERMISSION OR LAWFUL AUTHORITY, WITH THE INTENT TO OBTAIN, RECORD, OR ACCESS THE PERSONAL IDENTIFYING INFORMATION OR FINANCIAL IDENTIFYING INFORMATION OF ANOTHER.

(2) GATHERING IDENTITY INFORMATION BY DECEPTION IS A CLASS 5 FELONY.

18-5-905. Possession of identity theft tools. (1) A PERSON COMMITS POSSESSION OF IDENTITY THEFT TOOLS IF HE OR SHE POSSESSES ANY TOOLS, EQUIPMENT, COMPUTER, COMPUTER NETWORK, SCANNER, PRINTER, OR OTHER ARTICLE ADAPTED, DESIGNED, OR COMMONLY USED FOR COMMITTING OR FACILITATING THE COMMISSION OF THE OFFENSE OF IDENTITY THEFT AS DESCRIBED IN SECTION 18-5-902, AND INTENDS TO USE THE THING POSSESSED, OR KNOWS THAT A PERSON INTENDS TO USE THE

THING POSSESSED, IN THE COMMISSION OF THE OFFENSE OF IDENTITY THEFT.

(2) POSSESSION OF IDENTITY THEFT TOOLS IS A CLASS 5 FELONY.

SECTION 9. 18-17-103 (5) (b) (IV), Colorado Revised Statutes, is amended to read:

18-17-103. Definitions. (5) "Racketeering activity" means to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit:

(b) Any violation of the following provisions of the Colorado statutes or any criminal act committed in any jurisdiction of the United States which, if committed in this state, would be a crime under the following provisions of the Colorado statutes:

(IV) Offenses involving fraud, as defined in sections 18-5-102 (forgery), 18-5-104 (second degree forgery), 18-5-105 (criminal possession of forged instrument), 18-5-109 (criminal possession of forgery devices), 18-5-110.5 (trademark counterfeiting), 6-16-111, C.R.S., (felony charitable fraud), 18-5-206 (defrauding a secured creditor or debtor), 18-5-403 (bribery in sports), 18-5-113 (criminal impersonation), ~~and~~ 18-5-114 (offering a false document for recording), 18-5-702 (UNAUTHORIZED USE OF A FINANCIAL TRANSACTION DEVICE), 18-5-705 (CRIMINAL POSSESSION OR SALE OF A BLANK FINANCIAL TRANSACTION DEVICE), 18-5-706 (CRIMINAL POSSESSION OF FORGERY DEVICES), 18-5-707 (UNLAWFUL MANUFACTURE OF A FINANCIAL TRANSACTION DEVICE), 18-5-902 (IDENTITY THEFT), 18-5-903 (CRIMINAL POSSESSION OF A FINANCIAL DEVICE), 18-5-904 (GATHERING IDENTITY INFORMATION BY DECEPTION), AND 18-5-905 (POSSESSION OF IDENTITY THEFT TOOLS);

SECTION 10. 6-1-711 (2), Colorado Revised Statutes, is amended to read:

6-1-711. Restrictions on credit card receipts - legislative declaration - application - definitions. (2) No person that accepts credit cards for the transaction of business shall print more than the last five digits of the credit card account number or print the credit card expiration date, or both, on a credit card receipt. ~~to the cardholder.~~

SECTION 11. Part 1 of article 1 of title 17, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

17-1-153. Appropriation to comply with section 2-2-703 - HB 06-1326. (1) PURSUANT TO SECTION 2-2-703, C.R.S., THE FOLLOWING STATUTORY APPROPRIATIONS, OR SO MUCH THEREOF AS MAY BE NECESSARY, ARE MADE IN ORDER TO IMPLEMENT H.B. 06-1326, ENACTED AT THE SECOND REGULAR SESSION OF THE SIXTY-FIFTH GENERAL ASSEMBLY:

(a) FOR THE FISCAL YEAR BEGINNING JULY 1, 2006, IN ADDITION TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED FROM THE CAPITAL CONSTRUCTION FUND CREATED IN SECTION 24-75-302, C.R.S., TO THE CORRECTIONS EXPANSION RESERVE FUND CREATED IN SECTION 17-1-116, THE SUM OF SIX HUNDRED TEN THOUSAND THREE HUNDRED FIFTY-EIGHT DOLLARS (\$610,358).

(b) (I) FOR THE FISCAL YEAR BEGINNING JULY 1, 2007, IN ADDITION TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED, FROM THE CAPITAL CONSTRUCTION FUND CREATED IN SECTION 24-75-302, C.R.S., TO THE CORRECTIONS EXPANSION RESERVE FUND CREATED IN SECTION 17-1-116, THE SUM OF SIX HUNDRED TEN THOUSAND THREE HUNDRED FIFTY-EIGHT DOLLARS (\$610,358).

(II) FOR THE FISCAL YEAR BEGINNING JULY 1, 2007, IN ADDITION TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED TO THE DEPARTMENT OF CORRECTIONS, OUT OF ANY MONEYS IN THE GENERAL FUND NOT OTHERWISE APPROPRIATED, THE SUM OF ONE HUNDRED EIGHTY-SEVEN THOUSAND SIX HUNDRED NINETY-ONE DOLLARS (\$187,691).

(c) (I) FOR THE FISCAL YEAR BEGINNING JULY 1, 2008, IN ADDITION TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED, FROM THE CAPITAL CONSTRUCTION FUND CREATED IN SECTION 24-75-302, C.R.S., TO THE CORRECTIONS EXPANSION RESERVE FUND CREATED IN SECTION 17-1-116, THE SUM OF FOUR HUNDRED SIXTY-TWO THOUSAND ONE HUNDRED TWENTY-EIGHT DOLLARS (\$462,128).

(II) FOR THE FISCAL YEAR BEGINNING JULY 1, 2008, IN ADDITION TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED TO THE DEPARTMENT OF CORRECTIONS, OUT OF ANY MONEYS IN THE GENERAL FUND NOT OTHERWISE APPROPRIATED, THE SUM OF THREE HUNDRED SEVENTY-FIVE

THOUSAND THREE HUNDRED EIGHTY-TWO DOLLARS (\$375,382).

(d) FOR THE FISCAL YEAR BEGINNING JULY 1, 2009, IN ADDITION TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED TO THE DEPARTMENT OF CORRECTIONS, OUT OF ANY MONEYS IN THE GENERAL FUND NOT OTHERWISE APPROPRIATED, THE SUM OF FIVE HUNDRED SEVENTEEN THOUSAND FOUR HUNDRED NINETY-ONE DOLLARS (\$517,491).

(e) FOR THE FISCAL YEAR BEGINNING JULY 1, 2010, IN ADDITION TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED TO THE DEPARTMENT OF CORRECTIONS, OUT OF ANY MONEYS IN THE GENERAL FUND NOT OTHERWISE APPROPRIATED, THE SUM OF FIVE HUNDRED SEVENTEEN THOUSAND FOUR HUNDRED NINETY-ONE DOLLARS (\$517,491).

SECTION 12. 24-75-302 (2) (s), (2) (t), and (2) (u), Colorado Revised Statutes, are amended to read:

24-75-302. Capital construction fund - capital assessment fees - calculation. (2) As of July 1, 1988, and July 1 of each year thereafter through July 1, 2008, a sum as specified in this subsection (2) shall accrue to the capital construction fund. The state treasurer and the controller shall transfer such sum out of the general fund and into the capital construction fund as moneys become available in the general fund during the fiscal year beginning on said July 1. Transfers between funds pursuant to this subsection (2) shall not be deemed to be appropriations subject to the limitations of section 24-75-201.1. The amount which shall accrue pursuant to this subsection (2) shall be as follows:

(s) On July 1, 2006, twenty-two thousand nine hundred twenty-four dollars pursuant to section 3 of H.B. 02S-1006, enacted at the third extraordinary session of the sixty-third general assembly; plus two hundred ninety-one thousand seven hundred sixty-one dollars pursuant to H.B. 03-1004, enacted at the first regular session of the sixty-fourth general assembly; plus one hundred twenty-five thousand forty-one dollars pursuant to H.B. 03-1138, enacted at the first regular session of the sixty-fourth general assembly; plus sixty-nine thousand four hundred sixty-seven dollars pursuant to H.B. 03-1213, enacted at the first regular session of the sixty-fourth general assembly; plus sixty-nine thousand four hundred sixty-seven dollars pursuant to H.B. 03-1317, enacted at the first regular session of the sixty-fourth general assembly; plus ninety thousand three

hundred seven dollars pursuant to H.B. 04-1021, enacted at the second regular session of the sixty-fourth general assembly; plus sixty-nine thousand four hundred sixty-seven dollars pursuant to H.B. 04-1016, enacted at the second regular session of the sixty-fourth general assembly; PLUS SIX HUNDRED TEN THOUSAND THREE HUNDRED FIFTY-EIGHT DOLLARS PURSUANT TO H.B. 06-1326, ENACTED AT THE SECOND REGULAR SESSION OF THE SIXTY-FIFTH GENERAL ASSEMBLY;

(t) On July 1, 2007, four hundred sixteen thousand eight hundred two dollars pursuant to H.B. 03-1004, enacted at the first regular session of the sixty-fourth general assembly; plus fifty-five thousand five hundred seventy-four dollars pursuant to H.B. 03-1317, enacted at the first regular session of the sixty-fourth general assembly; plus thirteen thousand eight hundred ninety-three dollars pursuant to H.B. 04-1021, enacted at the second regular session of the sixty-fourth general assembly; PLUS SIX HUNDRED TEN THOUSAND THREE HUNDRED FIFTY-EIGHT DOLLARS PURSUANT TO H.B. 06-1326, ENACTED AT THE SECOND REGULAR SESSION OF THE SIXTY-FIFTH GENERAL ASSEMBLY;

(u) On July 1, 2008, sixty-nine thousand four hundred sixty-seven dollars pursuant to H.B. 04-1021, enacted at the second regular session of the sixty-fourth general assembly; PLUS FOUR HUNDRED SIXTY-TWO THOUSAND ONE HUNDRED TWENTY-EIGHT DOLLARS PURSUANT TO H.B. 06-1326, ENACTED AT THE SECOND REGULAR SESSION OF THE SIXTY-FIFTH GENERAL ASSEMBLY;

SECTION 13. Effective date - applicability. This act shall take effect July 1, 2006, and shall apply to offenses committed on or after said date.

SECTION 14. Safety clause. The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Andrew Romanoff
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Joan Fitz-Gerald
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Karen Goldman
SECRETARY OF
THE SENATE

APPROVED _____

Bill Owens
GOVERNOR OF THE STATE OF COLORADO

NOTE: This bill has been prepared for the signature of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.



SENATE BILL 09-093

BY SENATOR(S) Williams, Heath, King K., Boyd, Brophy, Cadman, Foster, Gibbs, Groff, Kopp, Lundberg, Mitchell, Penry, Renfroe, Romer, Schultheis, Schwartz, Shaffer B., Tochtrop;
also REPRESENTATIVE(S) Marostica, Middleton, Rice, Roberts, Apuan, Baumgardner, Gardner B., Gardner C., Gerou, Green, Kerr J., King S., McFadyen, Primavera, Priola, Schafer S., Stephens, Summers, Todd, Vigil.

CONCERNING IDENTITY THEFT.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 18-5-902 (1) (a), (1) (f), and (3), Colorado Revised Statutes, are amended to read:

18-5-902. Identity theft. (1) A person commits identity theft if he or she:

(a) Knowingly uses the personal identifying information, financial identifying information, or financial device of another without permission or lawful authority WITH THE INTENT to obtain cash, credit, property, services, or any other thing of value or to make a financial payment;

(f) ~~Attempts, conspires with another, or solicits another to commit~~

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

~~any of the acts set forth in paragraphs (a) to (e) of this subsection (1).~~

(3) The court shall be required to sentence the defendant to the department of corrections for a term of at least the minimum of the presumptive range and may sentence the defendant to a maximum of twice the presumptive range if:

(a) The defendant is convicted of identity theft OR OF ATTEMPT, CONSPIRACY, OR SOLICITATION TO COMMIT IDENTITY THEFT; and

(b) The defendant has a prior conviction for a violation of this part 9 or a prior conviction for an offense committed in any other state, the United States, or any other territory subject to the jurisdiction of the United States that would constitute a violation of this part 9 if committed in this state, OR FOR ATTEMPT, CONSPIRACY, OR SOLICITATION TO COMMIT A VIOLATION OF THIS PART 9 OR FOR ATTEMPT, CONSPIRACY, OR SOLICITATION TO COMMIT AN OFFENSE IN ANOTHER JURISDICTION THAT WOULD CONSTITUTE A VIOLATION OF THIS PART 9 IF COMMITTED IN THIS STATE.

SECTION 2. Part 9 of article 5 of title 18, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

18-5-903.5. Criminal possession of an identification document.

(1) A PERSON COMMITS CRIMINAL POSSESSION OF AN IDENTIFICATION DOCUMENT IF THE PERSON KNOWINGLY HAS IN HIS OR HER POSSESSION OR UNDER HIS OR HER CONTROL ANOTHER PERSON'S ACTUAL DRIVER'S LICENSE, ACTUAL GOVERNMENT-ISSUED IDENTIFICATION CARD, ACTUAL SOCIAL SECURITY CARD, OR ACTUAL PASSPORT, KNOWING THAT HE OR SHE DOES SO WITHOUT PERMISSION OR LAWFUL AUTHORITY.

(2) (a) CRIMINAL POSSESSION OF ONE OR MORE IDENTIFICATION DOCUMENTS ISSUED TO THE SAME PERSON IS A CLASS 1 MISDEMEANOR.

(b) CRIMINAL POSSESSION OF TWO OR MORE IDENTIFICATION DOCUMENTS, OF WHICH AT LEAST TWO ARE ISSUED TO DIFFERENT PERSONS, IS A CLASS 6 FELONY.

SECTION 3. 16-5-401 (4.5), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

16-5-401. Limitation for commencing criminal proceedings and juvenile delinquency proceedings. (4.5) The period within which a prosecution must be commenced shall begin to run upon discovery of the criminal act or the delinquent act for:

(m.5) OFFENSES RELATING TO IDENTITY THEFT, PURSUANT TO PART 9 OF ARTICLE 5 OF TITLE 18, C.R.S.;

SECTION 4. 18-17-103 (5) (b) (IV), Colorado Revised Statutes, is amended to read:

18-17-103. Definitions. As used in this article, unless the context otherwise requires:

(5) "Racketeering activity" means to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit:

(b) Any violation of the following provisions of the Colorado statutes or any criminal act committed in any jurisdiction of the United States which, if committed in this state, would be a crime under the following provisions of the Colorado statutes:

(IV) Offenses involving fraud, as defined in sections 18-5-102 (forgery), 18-5-104 (second degree forgery), 18-5-105 (criminal possession of forged instrument), 18-5-109 (criminal possession of forgery devices), 18-5-110.5 (trademark counterfeiting), 6-16-111, C.R.S., (felony charitable fraud), 18-5-206 (defrauding a secured creditor or debtor), 18-5-403 (bribery in sports), 18-5-113 (criminal impersonation), 18-5-114 (offering a false document for recording), 18-5-702 (unauthorized use of a financial transaction device), 18-5-705 (criminal possession or sale of a blank financial transaction device), 18-5-706 (criminal possession of forgery devices), 18-5-707 (unlawful manufacture of a financial transaction device), 18-5-902 (identity theft), 18-5-903 (criminal possession of a financial device), 18-5-903.5 (CRIMINAL POSSESSION OF AN IDENTIFICATION DOCUMENT), 18-5-904 (gathering identity information by deception), and 18-5-905 (possession of identity theft tools);

SECTION 5. Effective date - applicability. (1) Sections 1, 3, 5, and 6 of this act shall take effect July 1, 2009, and shall apply to offenses

committed on or after said date.

(2) Sections 2 and 4 of this act shall take effect July 1, 2011, and shall apply to offenses committed on or after said date.

SECTION 6. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Brandon C. Shaffer
PRESIDENT OF
THE SENATE

Terrance D. Carroll
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Karen Goldman
SECRETARY OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____

Bill Ritter, Jr.
GOVERNOR OF THE STATE OF COLORADO



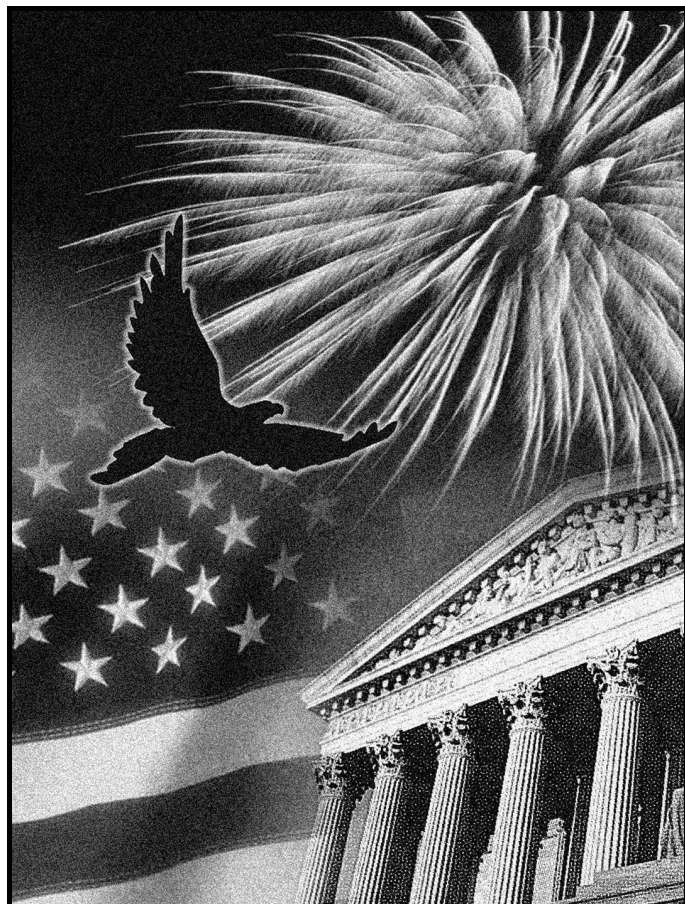
Department of the Treasury
Internal Revenue Service

Publication 15

Cat. No. 10000W

(Circular E), Employer's Tax Guide

For use in **2012**



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What's New

Future developments. The IRS has created a page on IRS.gov for information about Publication 15 (Circular E), at www.irs.gov/pub15. Information about any future developments affecting Publication 15 (Circular E) (such as legislation enacted after we release it) will be posted on that page.

Social security and Medicare tax for 2012. The employee tax rate for social security is 4.2% on wages paid and tips received before March 1, 2012. The employee tax rate for social security increases to 6.2% on wages paid and tips received after February 29, 2012. The employer tax rate for social security remains unchanged at 6.2%. The social security wage base limit is \$110,100. The Medicare tax rate is 1.45% each for the employee and employer, unchanged from 2011. There is no wage base limit for Medicare tax.

Employers should implement the 4.2% employee social security tax rate as soon as possible, but not later than

January 31, 2012. After implementing the 4.2% rate, employers should make an offsetting adjustment in a subsequent pay period to correct any overwithholding of social security tax as soon as possible, but not later than March 31, 2012.

Social security and Medicare taxes apply to the wages of household workers you pay \$1,800 or more in cash or an equivalent form of compensation. Social security and Medicare taxes apply to election workers who are paid \$1,500 or more in cash or an equivalent form of compensation.



At the time this publication was prepared for release, the rate for the employee's share of social security tax was 4.2% and scheduled to increase to 6.2% for wages paid after February 29, 2012. However, Congress was discussing an extension of the 4.2% employee tax rate for social security beyond February 29, 2012. Check for updates at www.irs.gov/pub15.

2012 withholding tables. This publication includes the 2012 Percentage Method Tables and Wage Bracket Tables for Income Tax Withholding.

VOW to Hire Heroes Act of 2011. On November 21, 2011, the President signed into law the VOW to Hire Heroes Act of 2011. This new law provides an expanded work opportunity tax credit to businesses that hire eligible unemployed veterans and, for the first time, also makes part of the credit available to tax-exempt organizations. Businesses claim the credit as part of the general business credit and tax-exempt organizations claim it against their payroll tax liability. The credit is available for eligible unemployed veterans who begin work on or after November 22, 2011, and before January 1, 2013. More information about the credit against a tax-exempt organization's payroll tax liability will be available early in 2012 at www.irs.gov/form5884c.

FUTA tax rate. The FUTA tax rate is 6.0% for 2012.

Expiration of Attributed Tip Income Program (ATIP). The Attributed Tip Income Program (ATIP) is scheduled to expire on December 31, 2011.

Withholding allowance. The 2012 amount for one withholding allowance on an annual basis is \$3,800.

Change of address. Beginning in 2012, employers must use new Form 8822-B, Change of Address—Business, for any address change.

Reminders

COBRA premium assistance credit. The credit for COBRA premium assistance payments applies to premiums paid for employees involuntarily terminated between September 1, 2008, and May 31, 2010, and to premiums paid for up to 15 months. See [COBRA premium assistance credit](#) under *Introduction*.

Federal tax deposits must be made by electronic funds transfer. You must use electronic funds transfer to make all federal tax deposits. Generally, electronic fund transfers are made using the Electronic Federal Tax Payment System (EFTPS). If you do not want to use EFTPS, you can arrange for your tax professional, financial institution, payroll service, or other trusted third party to make deposits on your behalf. Also, you may arrange for your financial institution to initiate a same-day wire payment on your behalf. EFTPS is a free service provided by the Department of

Treasury. Services provided by your tax professional, financial institution, payroll service, or other third party may have a fee.

For more information on making federal tax deposits, see [How To Deposit](#) in section 11. To get more information about EFTPS or to enroll in EFTPS, visit www.eftps.gov or call 1-800-555-4477. Additional information about EFTPS is also available in Publication 966, The Secure Way to Pay Your Federal Taxes.

Aggregate Form 941 filers. Agents must complete Schedule R (Form 941), Allocation Schedule for Aggregate Form 941 Filers, when filing an aggregate Form 941, Employer's QUARTERLY Federal Tax Return. Aggregate Forms 941 may only be filed by agents approved by the IRS under section 3504 of the Internal Revenue Code. To request approval to act as an agent for an employer, the agent files Form 2678, Employer/Payer Appointment of Agent, with the IRS.

Aggregate Form 940 filers. Agents must complete Schedule R (Form 940), Allocation Schedule for Aggregate Form 940 Filers, when filing an aggregate Form 940, Employer's Annual Federal Unemployment (FUTA) Tax Return. Aggregate Forms 940 can be filed by agents acting on behalf of home care service recipients who receive home care services through a program administered by a federal, state, or local government. To request approval to act as an agent on behalf of home care service recipients, the agent files Form 2678 with the IRS.

Employers can choose to file Forms 941 instead of Form 944. If you previously were notified to file Form 944, Employer's ANNUAL Federal Tax Return, but want to file quarterly Forms 941 to report your social security, Medicare and withheld federal income taxes, you must first contact the IRS to request to file Forms 941, rather than Form 944. See Rev. Proc. 2009-51, 2009-45 I.R.B. 625, for the procedures for employers who previously were notified to file Form 944 to request to file Forms 941 instead. In addition, Rev. Proc. 2009-51 provides the procedures for employers to request to file Form 944. Rev. Proc. 2009-51 is available at www.irs.gov/irb/2009-45_IRB/ar12.html. Also see the Instructions for Form 944.

Electronic Filing and Payment

Now, more than ever before, businesses can enjoy the benefits of filing and paying their federal taxes electronically. Whether you rely on a tax professional or handle your own taxes, the IRS offers you convenient programs to make filing and payment easier.

Spend less time and worry on taxes and more time running your business. Use *e-file* and the Electronic Federal Tax Payment System (EFTPS) to your benefit.

- For *e-file*, visit www.irs.gov/efile for additional information.
- For EFTPS, visit www.eftps.gov or call EFTPS Customer Service at 1-800-555-4477.
- For electronic filing of Forms W-2, visit www.socialsecurity.gov/employer.

Electronic funds withdrawal (EFW). If you file Form 940, Form 941, or Form 944 electronically, you can *e-file* and *e-pay* (electronic funds withdrawal) the balance due in a single step using tax preparation software or through a tax professional. However, **do not** use EFW to make federal tax deposits. For more information on paying your taxes using EFW, visit the IRS website at www.irs.gov/e-pay. A fee may be charged to file electronically.

Credit and debit card payments. For information on paying your taxes with a credit or debit card, visit the IRS website at www.irs.gov/e-pay.

Forms in Spanish

You can provide Formulario W-4(SP), Certificado de Exención de Retenciones del Empleado, in place of Form W-4, Employee's Withholding Allowance Certificate, to your Spanish-speaking employees. For more information, see Publicación 17(SP), El Impuesto Federal sobre los Ingresos (Para Personas Físicas). For nonemployees, Formulario W-9(SP), Solicitud y Certificación del Número de Identificación del Contribuyente, may be used in place of Form W-9, Request for Taxpayer Identification Number and Certification.

Hiring New Employees

Eligibility for employment. You must verify that each new employee is legally eligible to work in the United States. This will include completing the U.S. Citizenship and Immigration Services (USCIS) Form I-9, Employment Eligibility Verification. You can get the form from USCIS offices or by calling 1-800-870-3676. Contact the USCIS at 1-800-375-5283, or visit the USCIS website at www.uscis.gov for more information.

New hire reporting. You are required to report any new employee to a designated state new hire registry. Many states accept a copy of Form W-4 with employer information added. Visit the Office of Child Support Enforcement

website at www.acf.hhs.gov/programs/cse/newhire for more information.

W-4 request. Ask each new employee to complete the 2012 Form W-4. See [section 9](#).

Name and social security number. Record each new employee's name and number from his or her social security card. Any employee without a social security card should apply for one. See [section 4](#).

Paying Wages, Pensions, or Annuities

Correcting Form 941 or Form 944. If you discover an error on a previously filed Form 941 or Form 944, make the correction using Form 941-X, Adjusted Employer's QUARTERLY Federal Tax Return or Claim for Refund, or Form 944-X, Adjusted Employer's ANNUAL Federal Tax Return or Claim for Refund. Forms 941-X and 944-X are stand-alone forms, meaning taxpayers can file them when an error is discovered. Forms 941-X and 944-X are used by employers to claim refunds or abatement of employment taxes, rather than Form 843. See [section 13](#) for more information.

Income tax withholding. Withhold federal income tax from each wage payment or supplemental unemployment compensation plan benefit payment according to the employee's Form W-4 and the correct withholding table. If you have nonresident alien employees, see [Withholding income taxes on the wages of nonresident alien employees](#) in section 9.

Employer Responsibilities

Employer Responsibilities: The following list provides a brief summary of your basic responsibilities. Because the individual circumstances for each employer can vary greatly, responsibilities for withholding, depositing, and reporting employment taxes can differ. Each item in this list has a page reference to a more detailed discussion in this publication.

New Employees:		Page	Annually (By January 31 of the current year, for the prior year):		Page
<input type="checkbox"/>	Verify work eligibility of new employees	3	<input type="checkbox"/>	File Form 944 if required (pay tax with return if not required to deposit)	24
<input type="checkbox"/>	Record employees' names and SSNs from social security cards	3	Annually (see Calendar for due dates):		
<input type="checkbox"/>	Ask employees for Form W-4	3	<input type="checkbox"/>	Remind employees to submit a new Form W-4 if they need to change their withholding	16
Each Payday:			<input type="checkbox"/>	Ask for a new Form W-4 from employees claiming exemption from income tax withholding	17
<input type="checkbox"/>	Withhold federal income tax based on each employee's Form W-4	16	<input type="checkbox"/>	Reconcile Forms 941 (or Form 944) with Forms W-2 and W-3	25
<input type="checkbox"/>	Withhold employee's share of social security and Medicare taxes	19	<input type="checkbox"/>	Furnish each employee a Form W-2	6
<input type="checkbox"/>	Deposit:		<input type="checkbox"/>	File Copy A of Forms W-2 and the transmittal Form W-3 with the SSA	7
	• Withheld income tax		<input type="checkbox"/>	Furnish each other payee a Form 1099 (for example, Form 1099-MISC, Miscellaneous Income	6
	• Withheld and employer social security taxes		<input type="checkbox"/>	File Forms 1099 and the transmittal Form 1096	7
	• Withheld and employer Medicare taxes	20	<input type="checkbox"/>	File Form 940	6
Note: Due date of deposit generally depends on your deposit schedule (monthly or semiweekly)			<input type="checkbox"/>	File Form 945 for any nonpayroll income tax withholding	6
Quarterly (By April 30, July 31, October 31, and January 31):					
<input type="checkbox"/>	Deposit FUTA tax if undeposited amount is over \$500	29			
<input type="checkbox"/>	File Form 941 (pay tax with return if not required to deposit)	24			

Withhold from periodic **pension and annuity payments** as if the recipient is married claiming three withholding allowances, unless he or she has provided Form W-4P, Withholding Certificate for Pension or Annuity Payments, either electing no withholding or giving a different number of allowances, marital status, or an additional amount to be withheld. Do not withhold on direct rollovers from qualified plans or governmental section 457(b) plans. See [section 9](#) and Publication 15-A, Employer's Supplemental Tax Guide. Publication 15-A includes information about withholding on pensions and annuities.

Zero wage return. If you have not filed a "final" Form 941 or Form 944, or are not a "seasonal" employer, you must continue to file a Form 941 or Form 944 even for periods during which you paid no wages. IRS encourages you to file your "Zero Wage" Forms 941 or 944 electronically using IRS e-file at www.irs.gov/efile.

Information Returns

You may be required to file information returns to report certain types of payments made during the year. For example, you must file Form 1099-MISC, Miscellaneous Income, to report payments of \$600 or more to persons not treated as employees (for example, independent contractors) for services performed for your trade or business. For details about filing Forms 1099 and for information about required electronic filing, see the 2012 General Instructions for Certain Information Returns for general information and the separate, specific instructions for each information return you file (for example, 2012 Instructions for Form 1099-MISC). Do not use Forms 1099 to report wages and other compensation you paid to employees; report these on Form W-2. See the Instructions for Forms W-2 and W-3 for details about filing Form W-2 and for information about required electronic filing. If you file 250 or more Forms 1099, you must file them electronically. If you file 250 or more Forms W-2, you must file them electronically. SSA will not accept Forms W-2 and W-3 filed on magnetic media.

Information reporting customer service site. The IRS operates the Enterprise Computing Center-Martinsburg, a centralized customer service site, to answer questions about reporting on Forms W-2, W-3, 1099, and other information returns. If you have questions related to reporting on information returns, call 1-866-455-7438 (toll free) or 304-263-8700 (toll call). The center can also be reached by email at mccirp@irs.gov. Call 304-267-3367 if you are a TDD/TTY user.

Nonpayroll Income Tax Withholding

Nonpayroll federal income tax withholding (reported on Forms 1099 and Form W-2G) must be reported on Form 945, Annual Return of Withheld Federal Income Tax. Separate deposits are required for payroll (Form 941 or Form 944) and nonpayroll (Form 945) withholding. Nonpayroll items include:

- Pensions (including distributions from tax-favored retirement plans, for example, section 401(k), section 403(b), and governmental section 457(b) plans), and annuities.
- Military retirement.
- Gambling winnings.
- Indian gaming profits.
- Certain government payments, such as unemployment compensation, social security, and Tier 1 railroad retirement benefits, subject to voluntary withholding.

- Payments subject to backup withholding.

For details on depositing and reporting nonpayroll income tax withholding, see the Instructions for Form 945.

All income tax withholding reported on Form W-2 must be reported on Form 941, Form 943, Form 944, or Schedule H (Form 1040).

Distributions from nonqualified pension plans and deferred compensation plans. Because distributions to participants from some nonqualified pension plans and deferred compensation plans (including section 457(b) plans of tax-exempt organizations) are treated as wages and are reported on Form W-2, income tax withheld must be reported on Form 941 or Form 944, not on Form 945. However, distributions from such plans to a beneficiary or estate of a deceased employee are not wages and are reported on Forms 1099-R; income tax withheld must be reported on Form 945.

Backup withholding. You generally must withhold 28% of certain taxable payments if the payee fails to furnish you with his or her correct taxpayer identification number (TIN). This withholding is referred to as "backup withholding."

Payments subject to backup withholding include interest, dividends, patronage dividends, rents, royalties, commissions, nonemployee compensation, and certain other payments you make in the course of your trade or business. In addition, transactions by brokers and barter exchanges and certain payments made by fishing boat operators are subject to backup withholding.



Backup withholding does not apply to wages, pensions, annuities, IRAs (including simplified employee pension (SEP) and SIMPLE retirement plans), section 404(k) distributions from an employee stock ownership plan (ESOP), medical savings accounts, health savings accounts, long-term-care benefits, or real estate transactions.

You can use Form W-9 or Formulario W-9(SP) to request payees to furnish a TIN and to certify the number furnished is correct. You can also use Form W-9 or Formulario W-9(SP) to get certifications from payees that they are not subject to backup withholding or that they are exempt from backup withholding. The Instructions for the Requester of Form W-9 or Formulario W-9(SP) includes a list of types of payees who are exempt from backup withholding. For more information, see Publication 1281, Backup Withholding for Missing and Incorrect Name/TIN(s).

Recordkeeping

Keep all records of employment taxes for at least 4 years. These should be available for IRS review. Your records should include the following information.

- Your employer identification number (EIN).
- Amounts and dates of all wage, annuity, and pension payments.
- Amounts of tips reported to you by your employees.
- Records of allocated tips.
- The fair market value of in-kind wages paid.
- **Names, addresses, social security numbers, and occupations of employees and recipients.**
- Any employee copies of Forms W-2 and W-2c returned to you as undeliverable.
- Dates of employment for each employee.
- Periods for which employees and recipients were paid while absent due to sickness or injury and the

4. Employee's Social Security Number (SSN)

You are required to get each employee's name and SSN and to enter them on Form W-2. This requirement also applies to resident and nonresident alien employees. You should ask your employee to show you his or her social security card. The employee may show the card if it is available.



Do not accept a social security card that says "Not valid for employment." A social security number issued with this legend does not permit employment.

You may, but are not required to, photocopy the social security card if the employee provides it. If you do not provide the correct employee name and SSN on Form W-2, you may owe a penalty unless you have reasonable cause. See Publication 1586, Reasonable Cause Regulations and Requirements for Missing and Incorrect Name/TINs, for information on the requirement to solicit the employee's SSN.

Applying for a social security card. Any employee who is legally eligible to work in the United States and does not have a social security card can get one by completing Form SS-5, Application for a Social Security Card, and submitting the necessary documentation. You can get this form at SSA offices, by calling 1-800-772-1213, or from the SSA website at www.socialsecurity.gov/online/ss-5.html. The employee must complete and sign Form SS-5; it cannot be filed by the employer.

Applying for a social security number. If you file Form W-2 on paper and your employee applied for an SSN but does not have one when you must file Form W-2, enter "Applied For" on the form. If you are filing electronically, enter all zeros (000-00-000) in the social security number field. When the employee receives the SSN, file Copy A of Form W-2c, Corrected Wage and Tax Statement, with the SSA to show the employee's SSN. Furnish copies B, C, and 2 of Form W-2c to the employee. Up to five Forms W-2c for each Form W-3c, Transmittal of Corrected Wage and Tax Statements, may now be filed per session over the Internet, with no limit on the number of sessions. For more information, visit the SSA's Employer W-2 Filing Instructions & Information webpage at www.socialsecurity.gov/employer. Advise your employee to correct the SSN on his or her original Form W-2.

Correctly record the employee's name and SSN. Record the name and number of each employee as they are shown on the employee's social security card. If the employee's name is not correct as shown on the card (for example, because of marriage or divorce), the employee should request a corrected card from the SSA. Continue to report the employee's wages under the old name until the employee shows you an updated social security card with the new name.

If the SSA issues the employee a replacement card after a name change, or a new card with a different social security number after a change in alien work status, file a Form W-2c to correct the name/SSN reported for the most recently filed Form W-2. It is not necessary to correct other years if the previous name and number were used for years before the most recent Form W-2.

IRS individual taxpayer identification numbers (ITINs) for aliens. Do not accept an ITIN in place of an SSN for employee identification or for work. An ITIN is only available to resident and nonresident aliens who are not eligible for U.S. employment and need identification for other tax purposes. You can identify an ITIN because it is a nine-digit number, beginning with the number "9" with

either a "7" or "8" as the fourth digit and is formatted like an SSN (for example, 9NN-7N-NNNN).



An individual with an ITIN who later becomes eligible to work in the United States must obtain an SSN. If the individual is currently eligible to work in the United States, instruct the individual to apply for an SSN and follow the instructions under [Applying for a social security number](#) above. Do not use an ITIN in place of an SSN on Form W-2.

Verification of social security numbers. The SSA offers employers and authorized reporting agents three methods for verifying employee SSNs. Some verification methods require registration. For more information, call 1-800-772-6270.

- **Internet.** Verify up to 10 names and numbers (per screen) online using the Social Security Number Verification Service (SSNVS) and receive immediate results, or upload batch files of up to 250,000 names and numbers and usually receive results the next business day. Visit www.socialsecurity.gov/employer/ssnv.htm for more information.
- **Telephone.** Verify up to ten names and numbers with Telephone Number Employer Verification (TNEV) by calling 1-800-772-6270 or 1-800-772-1213.
- **Paper.** Verify up to 300 names and numbers by submitting a paper request. For information, see Appendix A in the SSNVS handbook at www.socialsecurity.gov/employer/ssnvshandbk/appendix.

Registering for SSNVS and TNEV. You must register online and receive authorization from your employer to use SSNVS or TNEV. To register, visit SSA's website at www.ssa.gov/employer and click on the *Business Services Online* link. Follow the registration instructions to obtain a user Identification (ID) and password. You will need to provide the following information about yourself and your company.

- Name.
- SSN.
- Date of birth.
- Type of employer.
- Employer identification number (EIN).
- Company name, address, and telephone number.
- Email address.

When you have completed the online registration process, SSA will mail a one-time activation code to your employer. You must enter the activation code online to use SSNVS or TNEV.

5. Wages and Other Compensation

Wages subject to federal employment taxes generally include all pay you give to an employee for services performed. The pay may be in cash or in other forms. It includes salaries, vacation allowances, bonuses, commissions, and fringe benefits. It does not matter how you measure or make the payments. Amounts an employer pays as a bonus for signing or ratifying a contract in connection with the establishment of an employer-employee relationship and an amount paid to an