

## POLICY & PROCEDURES

# Do Not Disclose Tax Information Without Proper Consent

FEBRUARY 9, 2009

### BE IN A POSITION OF STRENGTH

On January 1, 2009, new IRS regulations under Internal Revenue Code section 7216 became effective. The newly revised regulations attempt to address modern return preparation practices, including electronic filing and the cross marketing of financial and commercial products and services by tax return preparers.

Absent a specific exception, Treas. Reg. section 301.7216 generally prohibits the disclosure or use of tax return information without the client's explicit, written consent. In general, a "disclosure" of tax return information involves a disclosure by the preparer of a client's return information to a third party. A "use" of tax return information generally involves the use of the return information by the preparer potentially for the purposes of offering non-tax services to the taxpayer.

Under section 7216, a tax return preparer is subject to a **criminal penalty** for "knowingly or recklessly" disclosing or using tax return information. Each violation of section 7216 could result in a fine of up to \$1,000, or one year imprisonment, or both. Internal Revenue Code section 6713, the companion civil penalty, imposes a \$250 penalty on a preparer for each prohibited disclosure or use of the return information.

The IRS has issued temporary and proposed regulations on July 1, 2008 (including an accompanying revenue procedure) which modified section 301.7216-3(b)(4). This modification, which was made final on December 16, 2008, allows disclosure of a taxpayer's SSN by a U.S. preparer to a non-U.S. preparer with taxpayer consent if certain security procedures are in effect.

### CRIMINAL PENALTIES FOR IMPROPER USE OF TAX INFORMATION

Questions or comments?

E-mail us at [taxbriefs@withum.com](mailto:taxbriefs@withum.com)



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Within appropriate limits and safeguards, the final 7216 regulations confirm that the taxpayer continues to maintain the ability and the right to direct a preparer to disclose tax return information as the taxpayer sees fit. For the Form 1040 series (i.e., Forms 1040, 1040NR, 1040A, and 1040EZ), section 301.7216-3 and Rev. Proc. 2008-35 provides detailed guidance regarding the content of the written consent form involving individual taxpayers. This consent form is a separate document from the traditional engagement letter sent to individual clients each year. In general, for the Form 1040 series, a preparer cannot provide a taxpayer with the same consent form to authorize both “uses” and “disclosures” of tax return information.

However, one consent form may be used to cover what may be considered multiple “uses” of return information and another consent form to cover multiple “disclosures” of return information. In contrast, the preparer may cover the uses or disclosures of a business entity’s tax return information as part of the engagement letter sent to the business.

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Four examples of consent forms are provided as follows:

- (1) [General] Consent to Disclosure of Tax Return Information. This is a general consent to disclose tax return information which can be used for disclosure of the return information to (among others) your client's banker or mortgage broker. (See Consent A.)
- (2) [Specific] Consent to Disclosure of Tax Return Information. This consent form involves the disclosure of tax return information to a specific financial planning/investment firm. (See Consent B.)
- (3) Consent to [Foreign] Disclosure of Tax Return Information. This consent form permits a U.S. preparer to disclose tax return information (including the taxpayer's SSN as long as adequate data protection safeguards are in place) to a foreign-based preparer. (See Consent C.)
- (4) Consent to Use of Tax Return Information. This consent form covers the use of the tax return information by the preparer to disseminate firm newsletters, press releases, webcasts, and hiring announcements to individual clients. This consent form should be used when the preparer plans on using an individual's tax return information for non-tax purposes. (See Consent D.)

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*If you have any questions, please contact the WS+B tax department.*

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