

## Q&A Concerning the IRS's Proposed Rule Change

### What does the IRS's current rule allow in regards to sharing or selling tax returns?

Existing law under the IRS code prohibits the disclosure of tax return information unless the disclosure falls under certain statutory or regulatory exceptions. Such information can only be disclosed for limited purposes:

1. If the preparer is using the information to solicit additional current business that either the preparer itself provides or is provided by a direct affiliate of the preparer, and consent to the solicitation is obtained from the taxpayer;

or

2. If the taxpayer specifically designates a third party with whom the information may be shared and the taxpayer gives explicit consent to the sharing;

or

3. If the information is to be used in conjunction with the preparation of someone else's tax return and the taxpayer gives explicit consent to the use.

Specifically, Title 26, Volume 18, Section 301.7216-3 of the Code of Federal Regulations states:

Crimes, Other Offenses, and Forfeitures

Sec. 301.7216-3 Disclosure or use only with formal consent of taxpayer.

(a) Written consent to use or disclosure –

(1) Solicitation of other business.

(i) If a tax return preparer has obtained from the taxpayer a consent described in paragraph (b) of this section, he may use the tax return information of such taxpayer to solicit from the taxpayer any additional current business, in matters not related to the Internal Revenue Service, which the tax return preparer provides and offers to the public. The request for such consent may not be made later than the time the taxpayer receives his completed tax return from the tax return preparer. If the request is not granted, no follow up request may be made. This authorization to use the tax return information of the taxpayer does not apply, however, for purposes of facilitating the solicitation of the taxpayer's use of any services or facilities furnished by a person other than the tax return preparer, unless such other person and the tax return preparer are members of the same affiliated group within the meaning of section 1504. Thus, for example, the authorization would not apply if the other person is a corporation which is owned or controlled directly or indirectly by the same interests which own or control the tax return preparer but which is not affiliated with the tax return preparer within the meaning of section 1504(a). Moreover, this authorization does not apply for purposes of facilitating the solicitation of additional business to be furnished at some indefinite time in the future, as, for example, the future sale of mutual fund shares or life insurance, or the furnishing of future credit card services. It is not necessary, however, that the additional business be furnished in the same locality in which the tax return information is furnished.

(ii) For prohibition against solicitation of employment in matters related to the Internal Revenue Service, see 31 CFR 10.30 (Treasury Department Circular No. 230) and section 7 of Rev. Proc. 68-20, 1968-1 C.B. 812.

(2) Permissible disclosures to third parties. If a tax return preparer has obtained from a taxpayer a consent described in paragraph (b) of this section, he may disclose the tax return information of such taxpayer to such third persons as the taxpayer may direct. However, see Sec. 301.7216-2 for certain permissible disclosures without formal written consent.

(3) Disclosure or use of information in connection with another person's return. A tax return preparer may disclose or use any tax return information, which was obtained from a first taxpayer, in preparing a tax return of a second taxpayer if the tax return preparer has obtained from the first taxpayer a written consent described in paragraph (b) of this section. See Sec. 301.7216-2(b) for disclosure or use in certain cases without formal consent.

(b) Form of consent. A separate written consent, signed by the taxpayer or his duly authorized agent or fiduciary, must be obtained for each separate use or disclosure authorized in paragraph (a) (1), (2) or (3) of this section and shall contain--

- (1) The name of the tax return preparer,
- (2) The name of the taxpayer,
- (3) The purpose for which the consent is being furnished.
- (4) The date on which such consent is signed,
- (5) A statement that the tax return information may not be disclosed or used by the tax return preparer for any purpose (not otherwise permitted under Sec. 301.7216-2) other than that stated in the consent, and
- (6) A statement by the taxpayer, or his agent or fiduciary, that he consents to the disclosure or use of such information for the purpose described in subparagraph (3) of this paragraph (b).

### **What would the IRS's proposed rule revisions allow in regards to sharing or selling tax returns?**

Proposed revisions to the IRS code would permit the disclosure of tax return information for any purpose, as long as the taxpayer gives consent.

1. The proposed rule does not limit the information that may be shared, or draw any distinctions between sensitive information and demographic information.
2. It allows for multiple uses and multiple disclosures by the tax preparer without limiting those uses or disclosures to specific purposes.
3. While it requires that the taxpayer consent to potential multiple uses and disclosures, it does not contemplate the resale or reuse of the information once it is initially shared or sold by the tax preparer.

Specifically, Title 26, Volume 18, Section 301.7216-3 of the Code of Federal Regulations would be rewritten as follows:

Par. 5. Section 301.7216-3 is revised to read as follows:

§301.7216-3 Disclosure or use permitted only with the taxpayer's consent.

(a) In general –

(1) Taxpayer consent. Unless section 7216 or §301.7216-2 specifically authorizes the disclosure or use of tax return information, a tax return preparer may not disclose or use a taxpayer's tax return information prior to obtaining a consent from the taxpayer, as described in this section. The consent must be knowing and voluntary. As an example, a tax return preparer may not condition its provision of preparation services upon the taxpayer's consenting to a use of the taxpayer's tax return information. Except as provided in paragraph (a)(2) of this section, conditioning the provision of services on the taxpayer's furnishing consent will make the consent involuntary, and the consent will not satisfy the requirements of this section.

(2) Taxpayer consent to a tax return preparer furnishing tax return information to another tax return preparer. A tax return preparer may condition its provision of preparation services upon a taxpayer's consenting to disclosure of the taxpayer's tax return information to another tax return preparer for the purpose of performing services that assist in the preparation of, or provide auxiliary services in connection with the preparation of, the tax return of the taxpayer.

(3) Guidance describing the form and contents of taxpayer consents. The Commissioner may issue guidance, by revenue procedure, describing the form and content of taxpayer consents authorized under this section.

(b) Timing requirements and limitations –

(1) No retroactive consent. A taxpayer must provide written consent before a tax return preparer discloses or uses the taxpayer's tax return information.

(2) Time limitations on requesting consent. A tax return preparer may not request a taxpayer's consent to use or disclose tax return information after the tax return preparer provides a completed tax return to the taxpayer for signature.

(3) No requests for consent after an unsuccessful request. With regard to tax return information for each income tax return that a tax return preparer prepares, if a taxpayer declines a request for consent to the use or disclosure of tax return information, the tax return preparer may not make another request to obtain consent for a purpose substantially similar to that of the rejected request.

(4) Duration of consent. No consent to the use or disclosure of tax return information may be effective for a period longer than one year from the date the taxpayer signed the consent.

(c) Special rules –

(1) Multiple disclosures within a single consent form or multiple uses within a single consent form. A taxpayer may consent to multiple uses within the same written document, or multiple disclosures within the same written document. A single written document, however, cannot authorize both uses and disclosures; rather one written document must authorize the uses and another separate written document must authorize the disclosures. Furthermore, a consent that authorizes multiple uses or multiple disclosures must specifically and separately identify each use or disclosure.

(2) Disclosure of entire return. A consent may authorize the disclosure of all information contained within a return. A consent authorizing the disclosure of an entire return must set forth an explanation of the reasons why a consent authorizing a more limited disclosure of tax return information is unsatisfactory for the purpose of the consent.

(3) Copy of consent must be provided to taxpayer. The tax return preparer must provide a copy of the executed consent to the taxpayer at the time of execution. The requirements of this paragraph may also be satisfied by giving the taxpayer the opportunity, at the time of executing the consent, to print the completed consent or save it in electronic form.

(d) Permissible disclosures to third parties at the request of the taxpayer. A tax return preparer may disclose tax return information to third parties as the taxpayer directs so long as the taxpayer provides a consent to disclose tax return information that satisfies the requirements of this paragraph and as prescribed by the Commissioner by revenue procedure. (See §601.601(d)(2) of this chapter.)

(e) Effective date. This section applies on the date that is 30 days after the final regulations are published in the Federal Register.

### **Why is the Attorney General's Office opposed to this change?**

The Attorney General's Office is concerned the proposed IRS revisions reduce protections for private information.

The law creates the potential for Social Security numbers, addresses, medical expenses, information about dependents, income, stock ownerships, bank account numbers and other information on a taxpayer's return to be exchanged with third parties.

Broadening access to personal information increases the potential risk for that information to be used fraudulently or maliciously.

The taxpayer's written consent is required before the information can be shared. However, consumers filling out multiple forms may not fully understand the parameters of consent. Moreover, the law does not contemplate the resale or reuse of the information once it is initially shared or sold by the tax preparer.

The Attorney General's Office feels the IRS should either amend its proposed rule to create more protections for sensitive information (rather than fewer ones) or keep the existing rule.