

**Office of Chief Counsel  
Internal Revenue Service  
memorandum**

date:

to: Betty Galvan-Krumdick  
Policy Analyst  
Compliance, Compliance Reporting, Exam WI

from: Richard Goldstein  
Special Counsel  
Associate Chief Counsel (Procedure & Administration) CC:PA

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subject: Third Party Designee Checkbox

This is in response to questions posed concerning the third party designee checkbox on the Form 1040. Specifically, you sought information concerning:

1. The expansion of the 2004 third party designee checkbox to include authority to discuss compliance issues arising from the return upon which the third party designation appears;
2. The ability to disclose information to any employee of a business or company designated by a taxpayer and not just the employee who actually prepared the return; and
3. The concern that a taxpayer may designate a company or business on his or her return and that any employee of that company or business, even one who is no longer with the company or business, has access to the taxpayer name and shared secret PIN and could call the IRS to get information concerning the taxpayer's return.

We address each of these issues below.

1. The expansion of the 2004 third party designee checkbox to include authority to discuss compliance issues arising from the return upon which the third party designation appears

The third party designee checkbox (Checkbox) that appears on the Form 1040 is a consent for the disclosure of return information to a third party under the authority of I.R.C. § 6103(c). Under this provision, and the implementing Treasury Regulations 301.6103(c)-1, the IRS can disclose to a duly designated third party any return or return information specified by a taxpayer. The Checkbox was added to the Form 1040 to simplify the resolution of tax return processing problems where the taxpayer wants the IRS to disclose returns or return information to a third party (e.g. paid preparer, friend, family) if questions arise during the processing of the return. For this reason, the Checkbox disclosure

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authority when initially added to the tax return was limited to the disclosure of returns and return information related to the processing of the return. The disclosure authority terminated within one year of the date the return was supposed to be filed after submission processing issues were likely to have been resolved. It was made clear from its inception that the Checkbox is a disclosure authority only, not a power of attorney, and does not authorize the third party designee to represent the taxpayer before the IRS.

The Checkbox continues to be a consent for the disclosure of return information to a third party under the authority of I.R.C. § 6103(c). However, as the program developed, discussions were had as to whether the Checkbox could be expanded beyond processing issues to authorize disclosure of other return information in connection with the return on which the Checkbox appears. A consent can authorize disclosure of whatever information the taxpayer chooses. Expanding the Checkbox consent disclosure authority to include accounting issues, including compliance, in connection with the return on which the Checkbox appears was a policy decision, not a legal issue. The Form 1040 asks a taxpayer if "[y]ou want to allow another person to discuss this return with the IRS (see page 58)" and lets the taxpayer check yes or no. The instructions to which the taxpayer is directed specify the kind of information that can be disclosed by the IRS if the taxpayer elects to check yes. Compliance matters included in the category of information listed in the instructions that can be discussed will be authorized for disclosure if the taxpayer checks the box. Provided that the instructions adequately inform the taxpayer that return information concerning compliance issues can be disclosed if the box is checked, the consent for the disclosure of such information is valid and the IRS has authority to disclose information consistent with the instructions.



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2. The ability to disclose information to any employee of a business or company designated by a taxpayer and not just the employee who actually prepared the return

When the Checkbox was first added to the Form 1040, the IRS' intent was that any tax preparer at the return preparer firm would be an authorized recipient of the taxpayer's return information if the Checkbox was checked, in large part because of the return preparer industry's use of seasonal employees. A seasonal employee who prepared a return may have left the firm's employ prior to the time the IRS contacts the preparer to resolve a processing issue. In an effort to make the Checkbox as worthwhile and efficient as possible, the intent was that the IRS could disclose return information to the remaining employees at the firm. The shared secret PIN would be the identifying information transcribed to the taxpayer's master file account. The shared secret PIN would also be on the copy of the return maintained in the preparer's office. If the IRS contacts the third

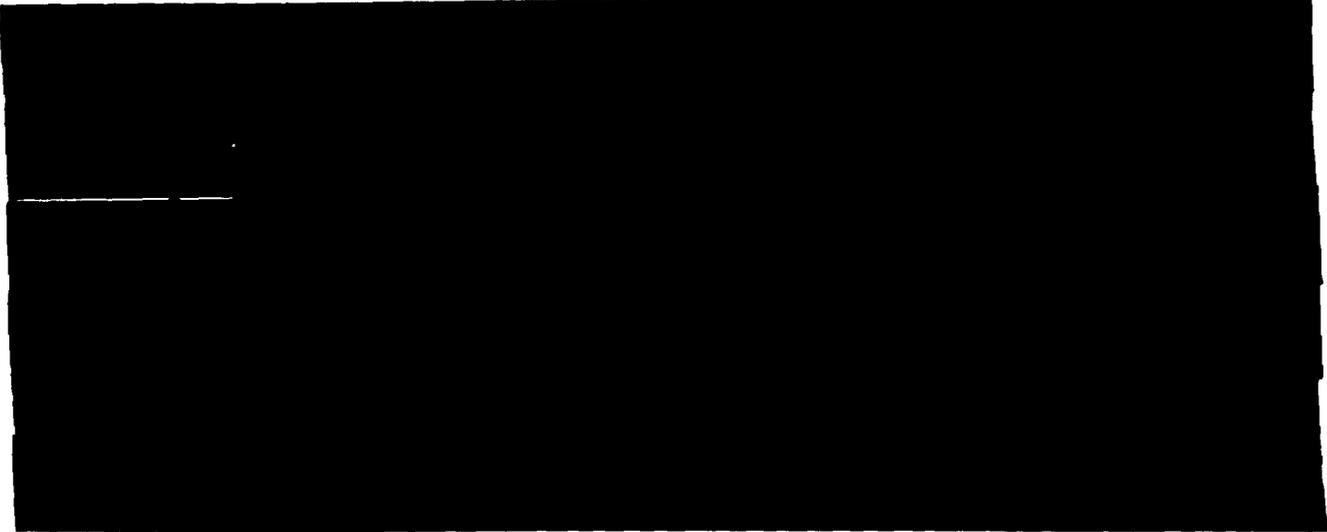
party designee with a question, another employee of the return preparer firm could pull the file and relay the shared secret PIN and get return information from the IRS to resolve the issue, even if the return's individual preparer was a seasonal employee no longer with the firm. A third party authorization chart recently reviewed for IRM 21 reflects this original intent that disclosure authority for the Checkbox extends to all employees of the designee paid preparer firm.

In reality, the program is administered in a different manner. Paid return preparers are directed by the instructions not to use the shared secret PIN. They are directed to write "Preparer" in the checkbox designation area. It is the individual preparer's PTIN or SSN that appears in the paid return preparer signature block that is transcribed to the taxpayer's master file account and used as the identifier for the third party designee. By using the individual preparer's PTIN or SSN, the taxpayer is designating only this individual, not other firm employees, as the authorized recipient of return information and the IRS can disclose return information only to this individual. If the paid return preparer firm's EIN was used and transcribed to the taxpayer's master file account the IRS could talk to anyone at the firm. If the shared secret PIN was used, the instructions could make clear that the disclosure is authorized to anyone at the firm. However, since an individual identifier is used, the taxpayer is designating only that individual and that is the only person the IRS is authorized to disclose return information to.

The IRS has several options for addressing this issue depending on how it sees the program operating. These options affect only the use of paid preparers. A taxpayer selection of a third party designee who is not a paid preparer and whose name appears in the third party designee box with a shared secret PIN will not be affected.



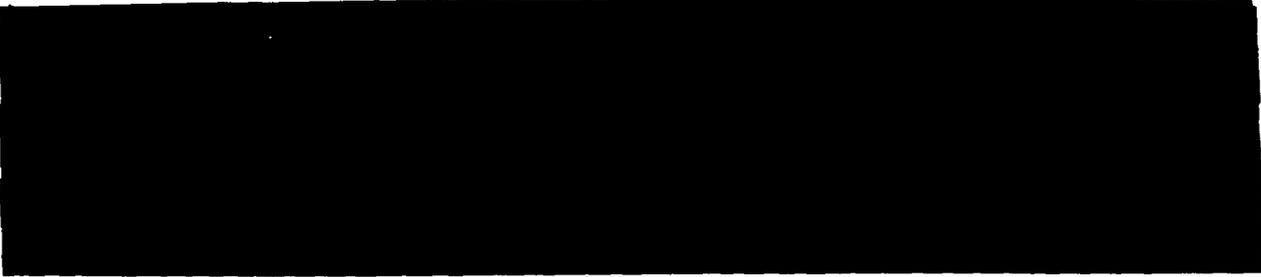
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3. The concern that a taxpayer may designate a company or business on his or her return and that any employee of that company or business, even one who is no longer with the company or business, has access to the taxpayer name and shared secret PIN and could call the IRS to get information concerning the taxpayer's return

This is a security issue for paid return preparers. Taxpayers routinely share sensitive information with paid return preparers. There is always the risk that the return preparer will use or disclose that information in a manner not anticipated by the taxpayer. I.R.C. § 7216 makes it a misdemeanor for a return preparer to knowingly or recklessly disclose or use information furnished to it for tax preparation reasons for reasons other than preparing or assisting in preparing a return. Treasury Regulations provide that included in the definition of return preparer is a person engaged in the business of tax preparation and individuals whose duties for such businesses include tax preparation services. Treas. Reg. § 301.7216-1(b)(2).

Employees and former employees of tax preparation services who are engaged in tax preparation activities or activities to facilitate tax preparation are subject to I.R.C. § 7216. It is unlikely that a former employee of a tax preparation service would be in a position to furnish continuing tax preparation services after their employment concludes. Any attempt to obtain a taxpayer's return information from the IRS pursuant to a Checkbox after leaving the tax preparation firm's employ may violate I.R.C. § 7216.<sup>1</sup>



<sup>1</sup> An attempt to access third party return information under these circumstances may also give rise to other non Internal Revenue Code violations, particularly if fraud is involved.

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