



IRS Nationwide

# Tax Forum | 2023

**Don't Tell Anyone But...**  
**Ethical Standards Surrounding**  
**Confidential Client Information!**



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# Learnings Objectives

- Similarities and differences among the various rules and standards that tax practitioners need to abide by
- Federal, state, and other jurisdictional law and Professional Organizations ethical rules
- What information can you share? With whom and when?
- When do you need permission to share client information?

# Today's Agenda

- Who is an “income tax preparer”?
- What is Confidential Client tax Information?
- What isn't Confidential tax Client information?
- Applicable Laws and Regulations-Civil and Criminal Penalties

# Considerations

- Federal Statutory Laws- IRS, FTC, etc.
- Internal Revenue Code Section 7216,
- Treasury Department Circular No. 230,
- AICPA's Code of Professional Conduct and the Statements on Standards for Tax Services,
- NAEA's Code of Ethics & Rules of Professional Conduct
- NSTP Code of Ethics and Rules
- State, local, and other jurisdictional rules and laws.



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# Key Terms

- Income tax preparer
- Use and Disclosure

# Income Tax Preparer

- IRC Section 7701 – Definitions
- IRC Section 6713 - Disclosure or use of information by preparers of returns
- IRC Section 7216 - Disclosure or use of information by preparers of returns
- *Different IRC sections with same title - both deal with Use and Disclosure of information*

# Who is an Income Tax Preparer?

- Code Section 7701(a)(36)
- Treas. Reg. §301.7701-15(b)
- Code Section 7216, Disclosure or use of information by preparers of returns – broader reach for this penalty
- Circular 230, §10.3 – Who may practice

# What Is Confidential Client Information?

- Internal Revenue Code
- Treas. Reg. §301.7216-1
- Circular 230, §10.36
- Professional Standards
- Other



# What Isn't Confidential Client Information?

- Information available to the general public

## Code Section 6713

§ 6713 Disclosure or use of information by preparers of returns.

(a) Imposition of penalty.

If any person who is engaged in the business of preparing or providing services in connection with the preparation of, returns of tax imposed by chapter 1, or any person who for compensation prepares any such return for any other person,

## Code Section 7216

§ 7216 Disclosure or use of information by preparers of returns.

(a) General rule.

Any person who is engaged in the business of preparing, or providing services in connection with the preparation of, returns of the tax imposed by chapter 1, or any person who for compensation prepares any such return for any other person, and who knowingly or recklessly-

## Code Section 6713

- (1) discloses any information furnished to him for, or in connection with, the preparation of any such return, or
- (2) uses any such information for any purpose other than to prepare, or assist in preparing, any such return

Penalty of \$250 for each such disclosure or use

## Code Section 7216

- (1) discloses any information furnished to him for, or in connection with, the preparation of any such return, or
- (2) uses any such information for any purpose other than to prepare, or assist in preparing, any such return,

Shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than \$1,000 (\$100,000 in the case of a disclosure or use to which section 6713(b) applies), or imprisoned not more than 1 year, or both together with the costs of prosecution.

# Code Section 7216, *Disclosure or use of information by preparers of returns*

## (a) GENERAL RULE

1. DISCLOSE
2. USES INFORMATION

Penalties

## (b) EXCEPTIONS

1. DISCLOSURE
2. USE
3. REGULATIONS



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What is knowingly or recklessly?  
Exercise Professional Judgment!

# Code Section 7216 Regulations

- **§301.7216-1 Penalty for Disclosure** – defines tax return preparer, tax return and penalty (\$1,000 and/or one year imprisonment; civil penalty under Code Sec. 6713 (\$250 per disclosure, max. \$10K)
- **§301.7216-2 Permissible Disclosures or Uses – No Consent Required**
- **§301.7216-3 Taxpayer consents for disclosure** – disclosure of SSN to preparer outside of United States prohibited – but later allowed in **§301.7216-3T(b)(4)**, issued in July 2008

# §301.7216-1 Penalty for Disclosure

## **Tax Information –**

tax information is expansive and includes all information provided or from or for a taxpayer including the taxpayer’s identifying information (name, etc.)

## **Preparer –**

a broad definition is provided for a “tax preparer” reaching a preparer, his or her firm; service providers with respect to processing and with respect to computer and data maintenance

# §301.7216-2 Permissible disclosures or uses without consent of the taxpayer

“Use” –

includes any circumstance in which a tax return preparer refers to, or relies upon, tax return information as the basis to take or permit an action

“Disclosure” –

the act of making tax information “known” to any person in any manner.



# Permitted Use or Disclosure Without Consent

- When required by any other provision of the Internal Revenue Code.
- When made to any officer or employee of the IRS
- Uses for preparation of return (same firm)
  - Updating taxpayers' tax return preparation software
  - To tax return preparers in the same firm located in U.S.
- By tax return preparers located in U.S. to tax preparers in the same firm located outside the U.S. where the information was originally furnished to the non-U.S. person in the same firm

# Permitted Use or Disclosure Without Consent - Continued

- Uses for preparation (preparer not in same firm)
  - Basic purpose of this provision is to permit “outside” processing of returns without taxpayer consent where the processor/preparer is located in U.S. and does not make substantive decisions (interpretations of or application of law) pertaining to the return.
  - Allows disclosure when written notice is provided addressed Sec. 6713 and 7216 rules for contractors for programming, maintenance, repair of software and equipment.

# Permitted Use or Disclosure Without Consent - Continued

- Related taxpayers
  - Exceptions for typical related taxpayer relationships for family, trusts & estates, corporations and shareholders and controlled corporations, partnerships and partners
  - Opt out provision for related parties
- Court or administrative orders, summons, subpoenas, PCAOB and professional ethics inquiries

# Permitted Use or Disclosure Without Consent - Continued

- Obtain legal advice and in connection with any proceedings involving preparer inquiries by governmental agencies
- Attorneys and Accountants
  - May disclose tax information to members of same firm in connection with providing other legal and accounting services to the taxpayer (e.g. estate planning advice or CPA attest function)
  - Does not include entities affiliated with law or CPA firm (e.g. “insurance” or “investment” affiliated, 1031 accommodators)
  - May unless directed otherwise by taxpayer (“opt out”) make information available to 3<sup>rd</sup> parties including stockholders, management, suppliers or lenders *when consistent with professional ethical responsibilities*
  - May “take into account” tax information (within the same firm) of one client in connection with services rendered to another client but may not disclose to another taxpayer or outside the same firm.

# Permitted Use or Disclosure Without Consent - Continued

- Corporate fiduciaries
  - In rendering investment, fiduciary or custodial services unless taxpayer opts out.
  - Make available tax information to attorney, accountant or investment advisor.
- Taxpayer's fiduciary in situations involving death, incompetency, insolvency, conservatorship, receivership
- Situations involving state and local tax matters, foreign country tax obligations
- Payment for tax preparation services to the extent necessary to process or collect payment

# Permitted Use or Disclosure Without Consent - Continued

- May retain tax return information including copies of returns, may use in preparation of other returns of the taxpayer, examinations, litigation
- Lists for solicitation of tax return business (ONLY) – e.g. a newsletter to a tax “only” client that promotes “non-tax” services is not permitted without the client’s affirmative consent
- Statistical compilations involving firm (only) management of tax return business

# Permitted Use or Disclosure Without Consent - Continued

- Quality or Peer Review
- To report the commission of a crime
- Tax return preparer's incapacity or death

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

- Reg. 301.7216-3 provides instructions for consent
- Taxpayer must “consent” for any uses of tax information not specifically listed in §301.7216-2.
- For the 1040 series of returns, Rev. Proc. 2008-35 provides disclosure guidance and provides examples for disclosure. Modified by and Superseded by Rev. Proc. 2013-14



# Taxpayer Consents

- For Non-1040 returns, the items for disclosure are listed in regulations at §301.7216-3(a)(3)(E)(iii).
- Consent may not be given retroactively
- Consent to the disclosure of a SSN (or similar ID no.) to a preparer outside the U.S. may only be given if adequate privacy protection safeguards exist at both ends of the communication process and are verified by the originator. [As originally drafted, transmission of an SSN was strictly prohibited in any situation]
- Each specific use of information is subject to and must receive consent.
- If the consent applies to the entire return, the taxpayer must have the opportunity to require more limited disclosure.

# Taxpayer Consents

- The preparer may condition preparation of the return on permission to disclose information to another tax return preparer for assistance in preparing a return or to provide “auxiliary” services in the preparation of the return. However, the preparer may not otherwise condition preparation of services on consent (e.g. *we won't prepare your return unless you permit us to market xyz services to you.*)
- Includes specific guidance on electronic signatures

# Guidance

- Revenue Procedure 2013-14 Guidance for form and content of taxpayer/client consents to use tax information with regard to the 1040 series of returns under §301.7216-3
- See also Rev. Rul. 2010-4; Rev. Rul. 2010-5 (dealing with newsletters and E & O Carriers)

# Form 1040 taxpayers – Consent to disclosure of tax return information

Federal law requires this consent form be provided to you. Unless authorized by law, we cannot disclose your tax return information to third parties for purposes other than the preparation and filing of your tax return without your consent. If you consent to the disclosure of your tax return information, federal law may not protect your tax return information from further use or distribution.

You are not required to complete this form to engage our tax return preparation services.

If you agree to the disclosure of your tax return information, your consent is valid for the amount of time that you specify. If you do not specify the duration of your consent, your consent is valid for one year from the date of signature.

Content of disclosure:

- Purpose for disclosing information
- Name, and email of recipient
- Duration
- Signature

# Form 1040 taxpayers – Foreign Consent to disclosure of tax return information

Separate disclosure required

- Form 1040 series of returns – must obtain formal release
- Non-1040 returns – information can be included in the engagement letter



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# Example No. 1

You receive a telephone call or e mail from a mortgage company or banker requesting a copy of a client's income tax return you prepared.



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# Example No. 2

Subpoena from Court

## Example No. 3

- Husband and wife getting divorce. All communications have been with husband. Wife has requested a copy of return be sent to her attorney. She has sent a signed 7216 consent. Husband's attorney informs you not to furnish a copy of return to wife or her attorney.
- If joint return filed, do husband and wife both have to sign consent form to disclose information?





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# When In Doubt

- Error on the side of caution.
- Have access to both a hard copy and electronic copy of client consent
- Send client information directly to taxpayer and they forward
- Fire client

# Resources

- Section 7216 Information Center — <https://www.irs.gov/tax-professionals/section-7216-information-center>
- Section 7216 Frequently Asked Questions — <https://www.irs.gov/tax-professionals/section-7216-frequently-asked-questions>
- Revision to Section 301.7216-2 Guidance [https://www.irs.gov/irb/2010-04\\_IRB](https://www.irs.gov/irb/2010-04_IRB)
- Revenue Ruling 2010-04
- Revenue Ruling 2010-5



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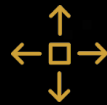
[aicpa.org/tax](https://aicpa.org/tax)



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