

Disclosure and Use of Tax Information – Internal Revenue Code (IRC) 7216 Requirements for VITA/TCE Partners

This document provides guidance for securing approval from the taxpayer to use or disclose information for purposes other than preparing and filing their tax returns.

Background:

Protecting taxpayer information is critical to maintaining the strong integrity and success of the VITA/TCE programs. Final Treasury Regulations under IRC 7216, Disclosure or Use of Tax Information by Preparers of Returns, became effective December 28, 2012. In general, the regulation requires tax return preparers – including volunteer preparers – who intend to use or disclose a taxpayer's tax return information for a purpose other than current, prior and subsequent return preparation, to obtain taxpayer consent and provide taxpayers with specific information. This includes who will receive their tax return information and the particular items of tax return information that will be disclosed or used.

If a taxpayer's consent is granted to share their tax return data, Federal Law may not protect the taxpayer's tax return information from further use or distribution. This means taxpayers must clearly understand how their information will be used before they agree to share it. Based on this, our partners are required to explain how taxpayers' information will be shared and used.

What are Consents?

Consents are paper or electronic documents that contain specific information, including the names of the tax return preparer and the taxpayer. They are customized to include the specific use or disclosure. Consents are valid only if they are made by the taxpayer knowingly and voluntarily and are signed and dated by the taxpayer in pen-and-ink (handwritten) or electronically. Consent forms must include certain language and warnings. Refer to Treas. Reg. §301.7216-3(a)(3) and Revenue Procedures 2013-14 and 2013-19 for complete information.

When are Consents not Required?

Exceptions to required consents can be found in Treas. Reg. §301.7216-2. Some instances where consents are not required include:

- Disclosures to the IRS
- Disclosures to other U.S. based tax return preparers that assist in preparing the return
- To create lists for solicitation of tax return preparation business

- To produce certain limited statistical compilations in connection with tax return preparation business that includes return counts, credit counts or refund counts (without dollar amounts) provided that it does not include any personally identifiable information or cells with data from fewer than ten tax returns.

Note: Statistical information with dollar amounts can be used for fundraising purposes without consent

In addition, a VITA/TCE site may compile and maintain a separate list containing names, mailing addresses, email addresses, phone numbers and taxpayer entity classification.

VITA/TCE program coordinators can contact the taxpayers on the list for the purpose of providing information – such as tax information, general business information, economic information or analysis for educational purposes – or to solicit additional tax return preparation services.

Note: Safeguards should be taken to protect Personally Identifiable Information (PII) to reduce the likelihood of identity theft and misuse of volunteer information.

Example: Preparer A prepares federal and state income tax returns for taxpayers who live in Pennsylvania, New Jersey, Maryland and Delaware. Preparer A maintains a list of taxpayer clients containing the information allowed. Preparer A provides quarterly state income tax information updates to individual taxpayer clients by email or U.S. mail. To ensure that clients only receive the information updates that are relevant to them, Preparer A uses his list to direct outreach efforts towards the relevant clients by searching his list to filter it by zip code. Preparer A may use the list information in this manner without taxpayer consent because he is providing tax information for educational or informational purposes.

What is the Partner’s Responsibility?

Partners should develop a script for volunteers to explain to taxpayers the specific information, including who will receive their tax return information and the tax return information that will be disclosed or used.

What are the Four Types of Consents?

- Use
- Disclosure
- Global Carryforward
- Relational EFIN

Consent to Use:

A consent to “use” allows the partner to roll-up the total dollar amounts associated with the refund issued and the qualified credits offered from all returns. This does not include personal information such as names, addresses, SSNs/ITINs, bank account information or other personal taxpayer data from the tax return. The consent must include the name and site address, the data used, the business/partner using the information and purpose.

Example A: A site wants to use tax return information to generate solicitations for products or services other than tax return preparation, such as mortgages or Individual Retirement Accounts (IRAs). To determine whether this service may be of interest to a taxpayer, the partner or sub-partner will need to use some of the tax return data. If the taxpayer consents to the use, the partner can use their tax return information to determine whether this service will benefit them.

Example B: A site wants to create marketing material to show their tax preparation service’s impact on the community. If the taxpayer consents to the use, the partner can include their return information – including aggregate refund and credit dollar amounts – in their compiled data.

If the taxpayer denies the consent, the partner cannot use their tax return information; however, the taxpayer cannot be denied tax return preparation services. The return can be prepared and e-filed by the site.

Consent to Disclose:

A consent to “disclose” allows the partner to disclose the taxpayer’s tax return information to determine whether the taxpayer will benefit from services offered such as financial advisory and asset planning.

Example: A site produced an anonymous statistical compilation of tax return information obtained during the filing season. The next filing season the site wants to disclose portions of the anonymous statistical compilation from aggregated figures containing data from ten or more tax returns in connection with the marketing of its financial advisory and asset-planning services. The site is required to receive taxpayer consent before disclosing the tax return information contained in the anonymous statistical compilation because the disclosure is not being made in support of the site’s tax return preparation business.

If the taxpayer denies the consent, the partner cannot disclose their tax return data; however, the taxpayer cannot be denied tax preparation services. The return can be prepared and e-filed by the site.

Consent to Global Carry Forward:

This consent allows all tax returns prepared within one VITA/TCE site to be available to all VITA/TCE partners/sites. This means the taxpayer will be able to visit any volunteer site next year and have their tax return populate with current year data, regardless of where it was filed this year.

The tax return information that will be disclosed includes – but is not limited to – demographic, financial and other personally identifiable information about the taxpayer, their tax return and their sources of income, which was input into the tax preparation software for the purpose of preparing their tax return.

If the taxpayer denies the consent, their data will not be available in sites other than where the last year’s return was prepared. In addition, the taxpayer cannot be denied tax preparation services. The return can be prepared and e-filed by the site.

Consents to Relational EFIN:

The relational EFIN process requires the tax preparation software provider to share the return data with a third party, the primary sponsor. Since the taxpayer data is shared, taxpayers must consent to “disclose” the data before electronically filing a tax return.

If the taxpayer does not grant consent, or no PIN and date are entered at a VITA or non-Tax-Aide TCE site, the e-file provider cannot disclose their data and the return cannot be e-filed because the relational EFIN process shares the data with the preparing site and the primary sponsor when the return is acknowledged. The taxpayer cannot be denied tax preparation services. The software can be used to prepare the return; however, the return **must be filed on paper (not e-filed)**. However, AARP Tax-Aide sites can e-file the tax return.

Note: Global Carryforward and Relational consents are pre-loaded by TaxSlayer and cannot be edited or deleted by the VITA/TCE site. Use and Disclose consents are added by the VITA/TCE site and may be edited or deleted by the site coordinator, if needed.

Multiple Disclosures or Uses Within a Single Consent Form

Treasury Regulations section 301.7216-3(c)(1) provides that a taxpayer may consent to multiple uses within the same written document or multiple disclosures within the same written document. Refer to Publication 4299 for additional guidance.

Electronic Signature Requirements

Rev. Proc. 2013-14 provides specific requirements for a taxpayer’s electronic signature to consent to disclose or use taxpayer’s tax return information. Unless an exception is granted, all consents to disclose or use tax return information must be physically signed by the taxpayer. A verbal consent is not an affirmative action and therefore not acceptable as a valid consent.

For electronic consents, a tax return preparer must obtain a taxpayer’s signature on the consent by one of the following methods. Consult your software provider to determine which method(s) is/are available in your tax preparation software. Not all software providers support all methods.

- Preparers may assign a personal identification number (PIN) that is at least 5 characters long for the taxpayer (such as their zip code) if the taxpayer signs a paper consent granting permission prior to entering the PIN. If not, the taxpayer may type in the pre-assigned PIN as the taxpayer’s signature authorizing the disclosure or use. The taxpayer must physically enter the PIN for the electronic signature to be valid.
- If a paper consent granting permission in advance is not secured, have the taxpayer type in the taxpayer’s name and then hit “enter” to authorize the consent. The taxpayer must physically type the name for the electronic consent to be valid.
- Any other manner in which the taxpayer physically enters 5 or more characters unique to the taxpayer that the tax return preparer uses to verify the taxpayer’s identity. For example, entry of a response to a question regarding a shared secret (such as mother’s maiden name, favorite color, significant date, etc.) could be the type of information by which the taxpayer authorizes disclosure or use of tax return information.

Resources:

Publication 4299, Privacy, Confidentiality and Civil Right - A Public Trust

Publication 4396-A, Partner Resource Guide

Visit the **Section 7216 Information Center** on irs.gov

Rev. Proc. 2013-14

TaxSlayer Pro Online User Guide - For detailed instructions on Working with Consents in TaxSlayer

Contact: If you have any questions, please contact your local SPEC relationship manager.