

2010
TAX FORUM
IRS Nationwide

Client Consents and Disclosures

and

Related Penalties for Non Compliance – the Practitioner’s Perspective

Presented by:

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History

- Civil War Income Tax Act of 1862
- Privacy Act of 1974
- Section 6103 in the Tax Reform Act of 1976
- Gramm-Leach-Bliley Act of 1999
- Section 7216, Disclosure or Use of Tax Information by Preparers of Returns
 - Provisions Effective, January 1, 2009
 - Contain Penalties & Enforcement

Four Components of Law(s)

- General rule makes tax returns and tax return information confidential
- Exceptions to the general rule detailing permissible disclosures
- Technical, administrative, and physical safeguard provisions
- Criminal penalties and a civil cause of action for the taxpayer

Who Do New Regulations Apply To?

All paid preparers, software developers, Electronic Return Originators, and other persons or entities engaged in tax return preparation services or services that are auxiliary to return preparation. They also apply to most volunteer preparers (ex: Volunteer Income Tax Assistance(VITA), Tax Counseling for the Elderly (TCE), and employees and contractors employed by tax preparation companies in a support role both inside and outside of your office.

Use Of Tax Return Information

Use of tax return information

Any circumstance where the preparer refers to or relies upon tax return information as to the basis to take or permit an action

IRS Example:

Tax Preparer inquires of taxpayers about whether they wish to make an IRA contribution after determining if the taxpayer is eligible to make an IRA contribution. Only those taxpayers that are eligible to make an IRA contribution receive the inquiry. This is a use of tax return information potentially subject to the consent rules

Disclosure of Tax Return Information

Act of making tax return information known to any person in any manner whatever



Disclosure Letters

- Written and signed instrument
- Documents confidential information transferred between two or more parties
- Agreement between parties that information shared and obtained will be kept confidential and not used in any other manner
- Dated and signed by all parties

Consent Form(s)

- Written and signed document
- Between two or more parties
- Gives one of the parties **instructions** to use specified confidential tax information for purposes other than preparing a tax return
- Document must specify the information to be used and must be dated and signed by all parties *before* the tax return is prepared

Consent to Disclose

- Obtain permission to disclose tax return information to third party
- Document must specify the information to be disclosed
- Identify third party information will be given to
- Date and sign before the designated information is given to the third party

Consent to Disclose Cont'd

- Must be a separate written document
- Taxpayer's consent to each separate disclosure or use information must be contained on a separate written document
- Consent must be knowing and voluntary

Paper Consent Forms

- Must be written on 8½ by 11 inch, or larger, sheet of paper
- Document's type font must be 12 point
- All text on each sheet of paper must pertain solely to the disclosure or use the consent authorizes
- Paper page(s) must contain all the elements described in section 4.04 and if applicable comply with section 4.06

Client Opt Out

Client “OPT OUT” Is Not An
Option To Any Requirements

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Client Lists

- May compile a separate list of client names, address, Email address, and telephone numbers
- May only be used to contact a tax client to offer information or additional tax return preparation services or other permitted acts
- Cannot be used to offer other services (such as financial planning, elder care, insurance products, investment advice, etc.)

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Penalties

- Civil Penalty
 - Code Sec 6713(a) for unauthorized disclosures or uses a fine of \$250 for each disclosure or use, not to exceed a total of \$10,000 for a calendar year
- Criminal Penalty
 - Code Sec 7216 for preparers who knowingly or recklessly make unauthorized use or disclosure of tax return information that was provided to them a violation could result in up to one year imprisonment, a fine of not more than \$1,000, or both, per each violation

For More Information: National Society of Accountants (NSA)

More information is available including
clickable links to research materials,
information about a 2 hour Webinar on this
topic and much more at

Booth _____ in Vendor Hall

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