



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

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INTERNAL REVENUE SERVICE NATIONAL OFFICE CHIEF COUNSEL ADVICE

MEMORANDUM FOR LOS ANGELES DISTRICT COUNSEL CC:WR:LAD:LA

FROM: David L. Fish
Chief, Branch 4 (Disclosure Litigation) CC:EL:D

SUBJECT: Return Preparers Disclosures to the Internal Revenue Service
(Service)

This is in response to your memorandum dated June 1, 1999. It is not to be relied upon or otherwise cited as precedent.

It is our understanding that some return preparers are reluctant to provide the Service with information absent a summons and cite I.R.C. § 7216 as justification for not providing the information. Section 7216 provides penalties and possible imprisonment if a return preparer

knowingly or recklessly—

(1) discloses any information furnished to him for, 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,

I.R.C. § 7216(a). Section 7216(b) provides exceptions to the restrictions on disclosure contained in section 7216(a). Specifically, section 7216(b) (1)(A) indicates that section 7216(a) does not apply if such disclosure is “pursuant to any other provision of this title” Section 7216(b)(3) further provides for disclosures as “permitted by regulations prescribed by the Secretary under this section.” The implementing regulations indicate that section 7216(a) does not apply to the disclosure of return

information provided such disclosure is pursuant to any other provision of the Code or regulations thereunder. See Treas. Reg. § 301.7216-2(a)

I.R.C. § 7601 grants the Secretary of the Treasury with power to instruct employees to canvas the Service districts in order to find taxable persons and objects.

I.R.C. § 7602 provides the authority for the Service to examine books and witnesses.

Treas. Reg. § 301.7216-2(a) indicates that disclosing books, papers, records, or other data which may be relevant to the income tax liability of any person to a Service officer or employee pursuant to I.R.C. § 7602 would not violate the provisions of section 7216. It has been the Service's longstanding position that sections 7601 and 7602 authorize the Service to obtain information informally. This position has been codified in section 7609(j), which provides:

[n]othing in this section shall be construed to limit the Secretary's ability to obtain information, other than by summons, through formal or informal procedures authorized by sections 7601 and 7602.

Thus, preparers do not run afoul of the restrictions in section 7216 by virtue of complying with an Internal Revenue Service request for information without a summons.¹

If you have any questions, please contact me at (202) 622-4570.

¹ In addition, I.R.C. § 6107(b) provides that an income tax return preparer must retain and keep available for inspection the completed copy of the return or refund claim for a three-year period ordinarily running from the close of the return period during which such return or refund claim is presented to the taxpayer for filing or, in the alternative, keep, for the same period, a list of all taxpayers and their identifying numbers for whom he has prepared returns. See also Treas. Reg. § 1.6107-1(b).