

## **Backgrounder on Proposed IRS Regulations under IRC Section 7216 Concerning Sharing of Taxpayers' Personal Information**

Several organizations representing consumers have argued that recent regulations proposed by the IRS would make it easier for tax preparers to sell or otherwise use taxpayers' personal information for purposes other than the preparation of the income tax return. The American Institute of Certified Public Accountants (AICPA) wants consumers to be aware of all the circumstances regarding the proposed regulations.

The approximately 330,000 Certified Public Accountants who are members of the AICPA are dedicated to the fundamental right of taxpayers to keep their taxpayer information private and completely agree with the consumer groups' interest in protecting taxpayers' privacy.

That is why AICPA members subject themselves to the AICPA's long-standing Professional Code of Conduct requiring members to notify taxpayers if it should become necessary for the CPA to provide any of the taxpayer's information to an individual or entity not directly involved in the preparation of the return. A violation of this rule could result in the revocation of the preparer's license to practice as a CPA.

Moreover, CPAs are trusted professionals in their business communities who are intent on establishing long term relationships with their clients. Dissemination of information without the taxpayer's complete approval and understanding of the purpose and necessity would jeopardize a fundamental aspect of that relationship.

**Is it true as some consumer advocates have argued that the proposed regulations would loosen the current rules that limit the use of taxpayer information?** The intent of the IRS in drafting the proposed regulations was to update the rules which are unchanged since 1974 and that did not address current common industry practices, such as electronic preparation or filing of tax returns. As part of this revision, the proposed regulations do permit taxpayers' information to be made available to third parties in the normal course of performing legal or accounting services "unless the taxpayer directs otherwise." Some consumer groups have interpreted this provision as representing a dramatic loosening of the current rules that require an "implied or actual consent" from the taxpayer in this circumstance. Although this proposed change in language does reflect a slight liberalization of the current rules, given that it is applicable only under limited circumstances, many people would not consider this a significant loosening.

Also, some consumer groups have implied that, under current rules, even with the taxpayer's permission, it is not possible for accountants to share taxpayer information with a party unrelated to either the tax preparer or the taxpayer. Actually, with the taxpayer's advance permission, the current regulations do permit this under a wide variety of circumstances. Regulation 301-7216-3(a)(2) provides:

If a tax return preparer has obtained from a taxpayer a consent...he may disclose the tax return information of such taxpayer to such third persons as the taxpayer may direct.

It's this ability of the preparer to share information that makes it so important that taxpayers choose their preparer carefully.

**Why would it be necessary for a CPA to share taxpayer information with a third party?** These circumstances are relatively unusual, but one example is taxpayers who have frequent stock market trades. These taxpayers usually want their tax preparers to work closely with their stock brokers in an effort to minimize their taxes. Similarly, taxpayers who are partners in a partnership will probably want the tax preparer to be able to discuss certain aspects of their personal tax situation with the preparer of the partnership return. This will enable the partnership to make the elections that are most advantageous to the partners.

**Should taxpayers be comfortable that they will receive adequate notification if any of their information is being shared with related or unrelated parties?** Yes, an individual who is a client of an AICPA member will receive three separate notifications if their information is being shared in any way. As discussed above, if AICPA members do not inform their client, they could be in violation of ethical rules and run the grave risk of losing their license to practice as a CPA. Further, the Gramm Leach Bliley Act requires every CPA every year to send to every client a statement specifying whether any of the taxpayer's information is being used for any purpose other than the preparation of their return. Finally, both the current and proposed IRS regulations would require the taxpayer's affirmative consent before his or her information could be shared with third parties. Violation of the IRS rule has been and would be a criminal offense.

**Should taxpayers be concerned that they might be asked to sign several documents at the same time making it less likely that they will fully understand they are giving permission to use their personal information?** This is unlikely given the redundancy of the three disclosure requirements discussed above. The AICPA always recommends that taxpayers, when considering someone to prepare their return, choose a trusted professional in their community.

**What action is the AICPA taking?** The AICPA has submitted written comments on the proposed regulations and will be testifying before the IRS at the hearing scheduled for next week.