

## ***ATTENTION!***

### **New Rules Have Teeth When Disclosing Tax Return Information To Third Parties...**

***Find Out What Tax Preparers Are Facing When You Ask For Information And How You Can Obtain What You Need!***

Getting information from tax preparers recently became more difficult.

On January 1, 2009, tax return preparers became subject to a dramatically more stringent set of additional rules regarding the use and disclosure of their clients' tax return information. These new rules and restrictions create everyday problems in their application by complicating a practitioner's ability to use and/or disclose tax return information.

The new rules have been given teeth. Criminal as well as civil penalties can apply. Further, violations can be sanctioned by restriction on a practitioner's right to practice before the IRS.

Under the new regulations, tax preparers need to be extremely cautious when disclosing tax return information to third parties.

#### **New Legislation:**

Code Section 7216 is a criminal provision enacted by the U.S. Congress in 1971 that prohibits preparers of tax returns from knowingly or recklessly disclosing or using tax return information. Treasury Regulation Section 301.7216-3 had been substantially unchanged since the 1970s and did not address the modern return preparation marketplace, particularly electronic filing and the cross-marketing of financial and commercial products and services during the return preparation experience. On January 1, 2009, Revenue Procedure 2008-35 took effect updating these regulations

The statute limits tax return preparers' use and disclosure of information obtained during the return preparation process to activities directly related to the preparation of the return. The regulations describe how preparers, with the informed written consent of taxpayers, may use or disclose return information for other purposes. The regulations also describe specific and limited exceptions that allow a preparer to use or disclose return information without the consent of taxpayers.

Tax return information is all the information tax return preparers obtain from taxpayers or other sources in any form or manner that is used to prepare tax returns or is obtained in connection with the preparation of returns. It also includes all computations, worksheets

and printouts preparers create; correspondence from IRS during the preparation, filing and correction of returns; statistical compilations of tax return information; and tax return preparation software registration information. All tax return information is protected by Code Section 7216 and the regulations.

In addition to potentially being sanctioned by restriction on a practitioner's right to practice before the IRS, penalties per act for failing to follow compliance procedures regarding the use and/or disclosure of tax return information are as follows:

**Civil Penalty.** A civil penalty is imposed under Code Section 6713(a) for unauthorized disclosures or uses of information furnished in connection with the preparation of an income tax return. The penalty for violating Code Section 6713 is \$250 for each disclosure or use, not to exceed a total of \$10,000 for a calendar year. The exceptions to the criminal penalty under Code Section 7216 also apply to the civil penalty Code Section 6713.

**Criminal Penalty.** Code Section 7216 imposes a criminal penalty on tax return preparers who knowingly or recklessly make an unauthorized use or disclosure of tax return information provided to them in connection with the preparation of an income tax return. A maximum \$1,000 fine or imprisonment of no more than one year, or both, may be imposed for each violation.

## Application

### ***Find Out How You Can Obtain What You Need...***

Although the new regulations are really geared toward the tax preparers' requirements regarding the use and disclosure of a taxpayers information, individuals requesting information from a tax preparer need to be aware of these new use and disclosure requirements.

**Accordingly, Business Transaction Advisors should advise their clients to prepare and execute a written disclosure, as per Revenue Procedure 2008-35, authorizing their tax preparer to release tax information if the tax information is going to be submitted directly to the Business Transaction Advisor.**

If tax information is going to be submitted by the tax preparer to the taxpayer who then provides the information to the Business Transaction Advisor, no disclosure consent is required.

By statute, consents must include the following:

- Identify the intended purpose of the disclosure or use;
- Identify the recipient(s) and describe the particular authorized information to be disclosed or used;

- Include the name of the tax return preparer and the name of the taxpayer;
- Include the applicable mandatory language set forth in section 4.04(a)-(c) of Revenue Procedure 2008-35 that informs the taxpayer that he is not required to sign the consent and if he signs the consent, he can set a time period for the duration of that consent;
- Include the mandatory language set forth in section 4.04(d) of Revenue Procedure 2008-35 that refers the taxpayer to the Treasury Inspector General for Tax Administration if he believes that his tax return information has been disclosed or used improperly;
- Where applicable, include the appropriate mandatory statement set forth in section 4.04(e) of Revenue Procedure 2008-35 that informs the taxpayer that his tax return information may be disclosed to a tax return preparer located outside the U.S.;
- Be in 12-point type on 8 1/2 by 11 inch paper. Electronic consents must be in the same type as the web site's standard text; and
- Contain the taxpayer's affirmative consent (as opposed to an "opt-out" clause); and
- Be signed and dated by the taxpayer.

In the event you find yourself needing a Disclosure Form, ***I want to give you a FREE template of a Tax Return Information Disclosure Request Form.*** To obtain your FREE Form, just click on the link immediately below!

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This document will eliminate the risk of getting bitten!