

Welcome



**Community Accounting
& Tax Professionals**

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Internal Revenue Code Section 7216

What Every Firm Should Know

Sponsored by PSPA
Community Accounting and Tax Professionals
Mary Lew Kehm, CPA
pspa@mlkehmcpa.com
610.262.0755

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Governing Provisions

- The Statute: IRC §7216
- The Treasury Regulations (26 CFR 301.7216)
 - 301.7216-1
 - 301.7216-2
 - 301.7216-3
- Revenue Procedure 2008-35

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Overview of Treasury Regulations

- 26 CFR 301.7216-1, 2, 3
- Revised Regulations apply to disclosures or uses occurring on or after 01/01/2009
- Purpose of revised regulations:
 - To give taxpayers greater control over their tax information
 - To govern how preparers may disclose or use tax return information (with consent)
 - To provide specific, limited exceptions allowing disclosure/use without consent

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Section 7216 makes it a crime for tax preparers to knowingly or recklessly:

- Disclose any information furnished to the person for (or in connection with) the preparation of any such tax return; or
- Use any such information for any purposes other than to prepare, or assist in preparing, any such return.

Section 6713 is the mirror civil penalty section. 5

Consequences

- Criminal-- §7216 Misdemeanor:
 - Fine—Not more than \$1,000
 - Imprisonment—Not more than 1 year
 - Or both
- Civil – Mirror section—IRC §6713(a)
 - \$250 per disclosure and/or use
 - Not to exceed \$10,000 in any calendar year

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Exceptions in IRC §7216

- Disclosure permitted elsewhere in the Code.
- Disclosure pursuant to a court order.
- State and Local Return or Estimated Tax Declaration.
- Per IRS regulations (coming up next)

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24 CFR 301.7216-1

KEY DEFINITIONS

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Tax Return

- Any return
- Or Amended Return
- Of Income Tax
- Imposed by Chapter 1 of the IRC (Sections 1 through 1400)
- Does NOT include Estate & Gift Tax, Employment Tax, or Excise Tax

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Tax Return Preparer

- Engaged in the business of preparing or assisting in preparing tax returns;
- Engaged in the business of providing axillary services for preparing tax returns;
- Otherwise compensated for preparing or assisting in preparing a tax return;
- Anyone who assists with the first three

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Business of Preparing Tax Returns

- Holds out to preparers or taxpayers as
 - One who prepares tax returns OR
 - One who assists in preparing tax returns
- Preparation need not be principal business
- Whether or not a fee is charged

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Tax Return Information

- ANY information furnished IN ANY FORM OR MANNER for the preparation for preparation of a tax return of the taxpayer.
- Specifically includes name, address, and identifying number (SSN, EIN)
- Does not include information obtained in another context – difficult exception

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Use and Disclosure

- Use –
Referring to or relying upon tax return information as basis to take or permit an action (usually the preparer or firm)
- Disclosure –
Making tax return information known to any person in any manner (third party or entity)

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24 CFR 301.7216-2 PERMITTED USES

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Consent Not Needed

- Pursuant to other provisions of code of regs.
- Disclosures to IRS
- Preparation of Tax Returns
- Disclosure to other Tax Return Preparers in your own firm
- Disclosure to other Tax Return Preparers not substantive to tax liability

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More Situations Allowed Without Consent

- Disclosure to (IT) Contractors – with written confidentiality statement and notification
- Pursuant to Court Order or Federal or State agency order
- Securing legal advice for preparer
- Related Taxpayers – as long as taxpayer has not expressly prohibited and taxpayer's interest is not adverse to other taxpayer

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Related Taxpayers

- One or more of the following relationships:
 - husband and wife,
 - child and parent,
 - grandchild and grandparent,
 - partner and partnership,
 - trust or estate and fiduciary,
 - corporation and shareholder or members of a controlled group of corporations as defined in §1563.

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Certain Disclosures by Preparers who are Attorneys & Accountants

- Tax return preparer who is lawfully engaged in the practice of law or accountancy and prepares a tax return for a taxpayer may use the taxpayer's tax return information, or disclose the information to another officer, lawyer or member of the tax return preparer's law or accounting firm (consistent with the applicable legal and ethical responsibilities) who may use the return information for the purposes of providing other legal and accounting services to the taxpayer. § 301.7616-2(h)(1)(I).

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“Normal Course”

- In the normal course of rendering legal or accounting services to the taxpayer, the attorney or accountant may make the tax return information available to third parties, including stockholders, management, suppliers or lenders consistent with the applicable legal and ethical responsibilities, unless the taxpayer directs otherwise.

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Other Disclosure Exceptions

- Disclosure by Corporate Fiduciaries.
- Disclosure to Taxpayer's Fiduciary.
- Disclosures to an Officer/Employee of the IRS.
- Disclosure or Use of Information in Preparation or Audit of State or Local Tax Returns or Assisting Taxpayer with Foreign Country Tax Obligations.

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More Exceptions

- Payment for Tax Preparation Services.
- Retention of Records.
- List for Solicitation of Tax Return Business.
- Information in Connection with the Tax Return Preparation Business.

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And More Exceptions

- Peer Reviews.
- Disclosure to Report Commission of Crime.
- Disclosure of Tax Return Information Due to a Tax Return Preparer's Incapacity or Death.

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QUESTIONS SO FAR?

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24 CFR 301.7216-3

DISCLOSURES OR USES
PERMITTED ONLY
WITH CLIENT CONSENT

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Client Consents – General Rules

- Names of the tax return preparer and the name of the taxpayer.
- Purpose of Disclosure or Use and Recipients.
- Signature and Date.
- Consents Must be Affirmative – taxpayer cannot issue a negative consent.
- Consent authorizing disclosure of an entire return must provide that the taxpayer has ability to request a more limited disclosure.

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Timing Requirements & Limits

- Retroactive consents are not allowed – Taxpayer must provide written consent before preparer discloses or uses taxpayer's tax return information
- A consent to disclose or use information **for the purposes of soliciting business unrelated to the tax return preparation may not be sought after the tax return preparer provided the completed tax return for signature to the client.**
- A request for consent may not be made after the client has declined to give consent.

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Time Limitations (Consent Requests—Solicitation)

- Preparer may not request taxpayer's consent to disclose/use tax return information
- For purposes of soliciting unrelated business
- After preparer provides completed tax return to taxpayer for signature
- So be sure you get it ahead of time if you need it!

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Other Consent Features

- Duration of a Consent. If duration not specified, the consent is effective for a period of one year from the date of consent.
- Multiple Disclosures in a Single Document OK, Multiple Uses OK, but uses and disclosures cannot be on same form.
- Copy of consent must be provided to the taxpayer.

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Special Rules for 1040 Series

Revenue Procedure 2008-35

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1040 Series Consent Rules

- Paper consents must be on one or more 8-1/2" x 11 " sheets of paper
- Text on the paper must pertain only to the disclosure or use the consent authorizes
- Text must be printed in at least 12 point type (font).

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Mandatory Language

- The IRS has issued mandatory language that must be used in each consent. The language cannot be modified except to substitute the preparer's name each time "we" or "our" is used in the required language – see sample letters.
- First and second paragraphs must be in sequence. Special paragraph for consent to disclosure for auxiliary services.

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Mandatory Language – Other Tax Prep.

Consent form for disclosure in tax preparation context (if required) must include the following statements in the following sequence:

"Federal law requires this consent form be provided to you. Unless authorized by law, we cannot disclose, without your consent, your tax return information to third parties for purposes other than the preparation and filing of your tax return and, in certain limited circumstances, for purposes involving tax return preparation. If you consent to the disclosure of your tax return information, Federal law may not protect your tax return information from further use or distribution."

"You are not required to complete this form. Because our ability to disclose your tax return information to another tax return preparer affects the service that we provide to you and its cost, we may decline to provide you with service or change the terms of service that we provide to you if you do not sign this form. If you agree to the disclosure of your tax return information, your consent is valid for the amount of time that you specify. If you do not specify the duration of your consent, your consent is valid for one year."

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Mandatory Language – Other Context

Consent form in other contexts must include the following statements in the following sequence:

"Federal law requires this consent form be provided to you. Unless authorized by law, we cannot disclose, without your consent, your tax return information to third parties for purposes other than the preparation and filing of your tax return. If you consent to the disclosure of your tax return information, Federal law may not protect your tax return information from further use or distribution."

"You are not required to complete this form. If we obtain your signature on this form by conditioning our services on your consent, your consent will not be valid. If you agree to the disclosure of your tax return information, your consent is valid for the amount of time that you specify. If you do not specify the duration of your consent, your consent is valid for one year."

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Mandatory Consent – Use

Consent form must include the following statements in the following sequence:

"Federal law requires this consent form be provided to you. Unless authorized by law, we cannot use, without your consent, your tax return information for purposes other than the preparation and filing of your tax return. "

"You are not required to complete this form. If we obtain your signature on this form by conditioning our services on your consent, your consent will not be valid. Your consent is valid for the amount of time that you specify. If you do not specify the duration of your consent, your consent is valid for one year."

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Mandatory Statement – All Consents

All consents must contain the following statement:

"If you believe your tax return information has been disclosed or used improperly in a manner unauthorized by law or without your permission, you may contact the Treasury Inspector General for Tax Administration (TIGTA) by telephone at 1-800-366-4484, or by email at complaints@tigta.treas.gov."

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I/We request and authorize [Name of Tax Preparer/Accountant] to use tax return information contained in my/our federal income tax returns and supporting schedules for 20 _____ for the purpose of providing to the taxpayer(s):

- Information that may be of interest to the taxpayer.
- Financial advice, including tax planning, discussion of investments, and other aspects of your financial life.
- Newsletters, including email updates, of accounting firm/preparer and from our affiliates.
- Press releases and published articles of accounting firm/preparer.
- Upcoming seminars, webinars, and webcasts.
- Accounting firm/preparer announcements.

This consent will be valid for a period of ____ year(s) beginning on _____ and will expire on _____.

Alternative expiration date requested by client: _____.

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Non-1040 Series

- If the consent pertains to a taxpayer not filing a Form 1040 series, the consent may be in any format, including an engagement letter to a client, so long as the consent complies with the requirements discussed above.

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Non-1040 Series

- May include uses and disclosures in one consent
- Consent need not specifically and separately describe multiple uses/disclosures
- May describe class of entities to receive disclosure:
 - If recipients engaged by taxpayer or affiliate
 - To render services in connection with preparation of returns, financials, or other financial information
 - As required by government authority, municipality or regulatory body

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Prepare for Tax Season

- Review the types of disclosure requests you will need
- For clients that have long-term financial advisers, family members, or related entities that will require annual consents, anticipate the needs
- Review your client list for “formerly married” clients that may require special conflict of interest disclosures
- Meet with your staff to discuss disclosure and use restrictions
- Sensitize yourself and your staff to client privacy issues
- Decide on office policy on disclosure and use requests
- Design authorizations if necessary

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Questions?

Thank You for attending today –
PSPA supports the local practitioner –
spread the word!

Mary Lew Kehm, CPA
pspa@mlkehmcpa.com
610.262.0755

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