

# Privacy and Confidentiality

—A *Public Trust*



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# Privacy and Confidentiality A Public Trust

## Introduction

The Internal Revenue Service (IRS) sponsors the VITA (Volunteer Income Tax Assistance) and the TCE (Tax Counseling for the Elderly) programs that provide free tax return preparation for low income and elderly taxpayers. Details governing the operation of these two programs are covered in various materials; however, there is one principle for both programs that echoes a cornerstone of the IRS, ensuring that public trust is protected and confidentiality is guaranteed. In an age where individual information is pervasive, the challenge to protect the information provided for tax return completion becomes exceedingly difficult. This document addresses the areas where diligence to detail is needed.

## Background

Partners and volunteers are not subject to all of the regulations to which IRS employees are held accountable. Information provided by individuals to a VITA or TCE volunteer is not considered "return information" protected by 26 U.S.C. Section 6103 until it is received, recorded, or collected by the IRS. However, TCE volunteers are subject to the criminal penalty provisions of 18 U.S.C. § 1905 for any improper disclosures of this information. It is critical to the program's success to ensure volunteers and their partnering organizations safeguard taxpayer information AND understand their responsibilities in this respect.

Taxpayers utilizing volunteer program services provide personal information to the volunteers, such as names, addresses, social security numbers, birth dates, and bank account information. This type of information is a prime target for identity theft. Therefore, partners and volunteers must keep the information confidential and protect it from unauthorized individuals and misuse.

## Protection against Legal Action

The Volunteer Protection Act of 1997, Public Law 105-19, protects volunteers from liability for negligent acts they perform within the scope of their responsibilities in the organization for who they volunteer. The Act excludes conduct that is willful or criminal, grossly negligent, or reckless, or that constitutes a conscious, flagrant indifference to the rights or safety of the individual harmed by the volunteer.

## Privacy and Confidentiality - Key Principles

Key principles have been identified below that can ensure integrity and continued public trust in the volunteer tax preparation program.

- *Partners and volunteers must keep confidential the information provided for tax return preparation.*
- *Partners and volunteers must protect physical and electronic data gathered for tax return preparation both during and after filing season.*

- *Partners with a need to retain and use the information (for purposes other than the preparation of the current year tax return) must provide written notice to customers outlining what information will be retained, for how long, how the information will be used, that it will be protected and obtain their approval. The customer must be provided an option allowing them to refuse this use of their information.*
- *Partners and volunteers who use IRS loaned equipment must delete customer information after filing season tax return preparation activities are completed.*
- *Partners and site coordinators must keep confidential any personal volunteer information provided.*

### **Obtaining Taxpayer Information**

- ***Partners and volunteers must keep confidential the information provided for tax return preparation.***

#### **Privacy during the Interview**

To the extent possible, arrange assistance areas to prevent others from easily overhearing or viewing the information under discussion. When volunteers require assistance to complete the tax return, they should ensure privacy is maintained during these discussions.

All tax returns should be prepared at the site with the taxpayer present. Taxpayer information should not be dropped off at a site for tax return preparation at a later time. In situations where sufficient information to complete the return is unavailable, all documents should be returned to the taxpayer with a request that they be brought back, along with the remaining information needed to complete the tax return.

#### **Requesting the Information**

When preparing tax returns, only information that is necessary and relevant should be requested. The information provided is entrusted to the volunteer with the taxpayer's confidence that it will not be shared or used in any unauthorized manner.

Information such as name, address, SSN, birthdates, marital status, bank account information for direct deposit and other basic information is necessary to prepare the return. Documents that are relevant to ensure identity and accuracy include:

- Identity documents- consist of a driver's license (U.S.), employer ID, school ID, birth certificate, state identification card (U.S.), Military ID, national identity card, visa, or passport. However, any other valid form of identification that would normally be used to prove identity is acceptable. Volunteers preparing tax returns should confirm the identity of the taxpayer to avoid the potential for identity theft or tax fraud. If the taxpayer cannot substantiate their identity, or if the volunteer is uncomfortable accepting the items presented as proof of identity, the taxpayer should seek professional assistance.
- Original or copies of social security cards or other form of SSN verification or ITIN (Individual Taxpayer Identification Number) card or letter. Volunteers should

confirm the SSN or ITIN and the correct spelling of names for all individuals listed on the tax return. In the event a taxpayer provides verification of the ITIN and the W-2 contains a SSN that cannot be verified, the ITIN will be the number used to prepare the tax return. The mismatch of names and SSN information is one of the top ten reasons for delays in processing electronic tax returns.

- Forms W-2, Forms 1099, and any other documents verifying income, deductions or necessary information to complete the tax return. Obtaining information from the source documents promotes the determination of the correct tax liability.

### Sharing the Information

Information provided for tax return preparation should not be shared with anyone who does not have a need to know. Individuals have the need to know if their involvement is required to process the information to its final disposition. Examples of “need to know” would include, sharing information for the purpose of obtaining guidance in tax return completion, for electronic transmission, and/or for quality review of the finished tax return. It is not acceptable to share information with others, even another volunteer, if their involvement in the tax return preparation is not required. For instance, sharing income information, birth dates, or even the marital status of taxpayers with other volunteers, taxpayers, family or friends as a matter of curiosity or interest is not acceptable.

### **Maintaining and Ensuring Confidentiality of Taxpayer Information**

➤ ***Partners and volunteers must protect physical and electronic data gathered for tax return preparation both during and after filing season.***

### Protecting the Information

Once the tax return is complete and the taxpayer has left, volunteers and sponsors must ensure the information is protected. When designing a protection method, sponsors and volunteers should ensure they keep only required documents. For tax returns that are electronically transmitted, the following documents are required to be retained, through December 31 of the current tax year per Publication 1345, IRS *e-file* Handbook. <sup>1\*</sup>

- Signed copies of Form 8453 with paper Forms W-2, W-2G and/or Forms 1099-R and any supporting documents not included in the electronic tax return (No form 8453 or attachments are required to be maintained if the taxpayer uses the self-select PIN option for signing the tax return).

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<sup>1</sup>In the past, TCE sponsors have been prohibited from retaining taxpayer data beyond the filing season due to the grant requirements listed within the TCE Application Package, Publication 1101. However, all 2004 TCE Sponsors will receive an amendment within their cooperative agreement/acceptance letter, authorizing them the option to retain data.

Documents and/or information that are provided to the IRS for storage and are subsequently used for tax administration purposes by the IRS, **become** “return information” protected by 26 U.S.C. 6103. At this point, they cannot be returned to a partner or volunteer for any use. This includes Forms 8453, back up disks containing tax return information, and/or supporting documents.

- Declaration Control Reports (DCR).
- IRS Acknowledgement Reports.
- Complete copy of the electronic portion of the tax return that can readily and accurately be converted into an electronic transmission that the Service can process.

Copies of paper prepared tax returns or related information, should not be maintained. Paper prepared tax returns are those returns completed without computer tax preparation software. Paper prepared returns are provided to the taxpayer for mailing to the IRS and do not require any retention of documents.

If the site currently provides the required documents to their local territory office for retention, this option is still available.

**\*Some states may have different requirements for retaining state related electronic filing documents. This document does not impact the recordkeeping requirements imposed by individual states.**

### Providing a safe environment for information

Implement a process to ensure information is adequately protected at all times. The process should include but is not limited to the following:

- Ensure that the information provided during the course of tax return preparation is under the care of volunteers at all times.
- Use locked storage.
- Keep diskettes containing taxpayer information secure.
- Label and account for the diskettes.
- Secure the equipment used for electronic tax return preparation and filing.
- Use passwords to prevent unauthorized access to the computer and software.
- Ensure portable equipment is under the care of a volunteer at all times.
- Use limited or controlled access locations for storing equipment.
- Guard equipment connected to the Internet with virus protection software.
- Ensure information is not accessible to general computer users who share equipment.

➤ ***Partners with a need to retain and use the information (for purposes other than the preparation of the current year tax return) must provide written notice to customers outlining what information will be retained, for how long, how the information will be used, that it will be protected and obtain their approval. The customer must be provided an option allowing them to refuse this use of their information.***

### Retaining the Information

Some partners may use information provided to volunteers for productivity, program evaluation, and/or promotion activities. This includes all information provided by a taxpayer during the course of the tax return preparation, including whether the customer has a bank account, whether the customer owns a home, etc. It is acceptable to keep this information, whether maintained electronically or in paper format, when it is disclosed to the customer; the type of information being maintained, how long the

information will be retained, how the information will be used, that it will be protected, and the customer agrees to this retention and use. The notice should also offer the customer assurance that service will not be denied if they do not agree to their data being used in this way.

Possible uses may include but are not limited to:

- Pro forma data retention for subsequent year tax return preparation. Pro forma data is general information about a customers' filing that may or may not be the same each year. Examples of pro forma data are names, addresses, dependents, social security numbers, birth dates, employer identification numbers and employer addresses.
- Generation of mailing lists to provide notice of tax return preparation and/or other program related activities or services of the partner that can benefit low to moderate income taxpayers. However, none of the information retained may be used for commercial purposes, given to a third party or sold for any purpose.
- Program evaluation and promotion. Data that would not be specific enough to identify the actual person involved can be used to assess program accomplishment, needs or trends. It would not include taxpayer name, social security number and/or the complete address. A non-identifying portion of the address, such as zip code and/or city would be acceptable for retention. Use of aggregate data does not require taxpayer agreement, but the use must be included in the notice.

Provide notice to the customer in writing. This disclosure should explain that certain information may be retained, for how long and how the information will be used and that it will be protected. The notice should contain the option for customers to refuse the use of their data.

The information retained should be properly disposed of once it is no longer needed. Proper disposal consists of shredding, burning or destroying disks containing personal, sensitive information.

➤ ***Partners and volunteers who use IRS loaned equipment must delete customer information after filing season tax return preparation activities are completed.***

#### Deleting Taxpayer Information

Information may not be stored on the individual equipment once filing season activities are completed. The information on IRS loaned computers must be deleted as part of site closing activities. Deleting the information properly will prevent unauthorized disclosure of confidential information.

Providers of electronic filing are reminded that they are required to retain a complete copy of the electronic portion of the tax return (which may be retained on magnetic media) until December 31 of the current tax year, which can be readily and accurately converted into an electronic transmission that the IRS can process.

## **Protection of Partner/Volunteer Information**

➤ ***Partners and site coordinators must keep confidential any personal volunteer information provided.***

Volunteer information is available to IRS employees for the purposes of administering the volunteer tax return preparation program. Information pertaining to a potential volunteer, such as the name, home address, phone number, foreign language skill and other pertinent information may be provided to a partner for purposes of ensuring that the potential volunteer is provided an opportunity to participate in the program. Similar information pertaining to current volunteers may also be provided to a partner to help coordinate maximum efficient use of volunteer skills. This information must be kept confidential and should not be disclosed to unauthorized individuals.

### **Release of Partner Information**

IRS will protect the information provided to the extent allowable by law. However, in some situations, IRS may be compelled to provide information requested under 5 U.S.C. 552, Freedom of Information Act (FOIA). For example a FOIA request for copies of the Application to Participate in the IRS E-file Program, Form 8633, could require the release of the applicant's name, business address and whether the applicant is licensed or bonded in accordance with state or local requirements. IRS cannot control how the information provided through a FOIA is used by the requester.

### **Potential Consequences**

As part of the Tax Counseling for the Elderly (TCE) cooperative agreement with the IRS, all TCE sponsors agree to (by signing a certification document) take all the reasonable steps necessary to ensure that information provided by taxpayers remains confidential. This includes instructing volunteers that such information is strictly confidential and must not be discussed with anyone and that the provisions relating to disclosure of tax information of Section 1905 of Title 18, United States Code, applies to volunteers as if they were employees of the United States. Disclosure of confidential information can result in fines or imprisonment.

The Volunteer Protection Act of 1997 excludes conduct that is willful or criminal, grossly negligent, or reckless, or conduct that constitutes a conscious, flagrant indifference to the rights or safety of the individual harmed by the volunteer. If a volunteer discloses information, fails to protect personal information or is otherwise flagrantly irresponsible with information entrusted to him/her, criminal charges or a civil law suit could be brought against the volunteer.

Another potential consequence of failure to adequately protect taxpayer information is that the IRS may discontinue the relationship with the partner or volunteer. Federal financial assistance may no longer be provided such as software, computer equipment or electronic filing privileges.

## Reference Materials

For further information and guidance please refer to the following:

**Publication 1345-** Handbook for Authorized IRS *e-file* Providers

**Publication 1345A-**Filing Season Supplement for Authorized IRS *e-file* Providers

**Publication 3189-** Volunteer *e-file* Administrator Guide

**Form 8633-** Application to Participate in IRS *e-file* Program

**Publication 1101-** 2005 Application Package and Guidelines for Managing a TCE Program

**Publication 1084-**Volunteer Coordinator's Handbook

## Suggested Notice Language

For Tax Year \_\_\_\_\_

Information provided to volunteers at this site will remain confidential. In addition, all information provided will be protected from unauthorized use.

Federal regulations require that certain information be maintained, while other information is needed for program analysis, subsequent year tax preparation, and other uses described below. You have the right to tell us that you prefer that your information be deleted after the filing season tax preparation activities are completed. Please indicate below whether we may use your information for purposes other than completing your tax return. Service will not be denied if you do not agree.

By electing to file your return electronically, you understand that we can keep your taxpayer information as described below.

1. IRS E-file regulations require certain documents be retained in the event return processing problems occur. These documents are retained until December 31 of the current tax year. State regulations may vary.
2. Aggregate data will be retained for program analysis. This data does not contain specific information about an individual, such as names and social security numbers. It will contain a portion of the address (city, state and/or zip code), the type of return prepared (1040, 1040A, 1040EZ) and some information from the return such as the amount of EITC and/or other credits.

In addition, by signing this document and indicating your agreement below, you allow us to retain additional information that can be used as follows:

3. General Information; such as employer/taxpayer address, identification numbers, birth dates, and names. This information can be used for subsequent return preparation. Use of prior year information can allow for faster and more accurate preparation.
4. Information may be used to provide you with mailings about other products or services we provide that might be of value to you. We plan to retain this information for (add length of time).

The information retained will not be shared with any unauthorized persons and will not be sold, given away or used for commercial purposes. The information will be properly disposed of when no longer needed.

Can we use your information to improve/help with subsequent tax year return preparation?

Yes  No

Can we use your information to send you notices about our services in the future?

Yes  No

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Your signature

Spouse signature

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Your signature

Spouse signature

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## Sponsor Agreement

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We appreciate your willingness and commitment to serve as a sponsor in the Volunteer Income Tax Assistance (VITA) or Tax Counseling for the Elderly (TCE) volunteer tax return preparation programs.

To maintain program integrity and provide for reasonable protection of information provided by the individuals who use the services, it is essential that the following key principles be followed.

- Partners and volunteers must keep confidential the information provided for tax return preparation.
- Partners and volunteers must protect physical and electronic data gathered for tax return preparation both during and after filing season.
- Partners with a need to retain and use the information (for purposes other than the preparation of the current year tax return) must provide written notice to customers outlining what information will be retained, for how long, how the information will be used, that it will be protected and obtain their approval. The customer must be provided an option allowing them to refuse this use of their information.
- Partners and volunteers who use IRS loaned equipment must delete data after filing season tax return preparation activities are completed.
- Partners and site coordinators are expected to keep confidential any personal volunteer information provided.

In addition if you support electronic filing through IRS provided software, it is essential to observe our software license agreement and electronic filing guidance.

### Software License

IRS provides a software package used for electronic return generation and transmission. The software product provided by IRS is Tax Wise© developed by Universal Tax Systems (UTS). The IRS agreement with UTS states: UTS agrees the IRS will purchase one piece of software per site per Electronic Filing Identification Number (EFIN), which may be loaded on all computers located at the physical address of the site as long as only one machine serves as a transmitter. In addition, UTS agrees to laptop computers used to support multiple locations, such as providing tax return preparation for shut-ins or rural communities with no primary physical site location, and one machine serves as a transmitter, a single software license is needed. The software media may also be duplicated for the purpose of speeding installation of the product on the machines.

Sponsor Name	Street Address	Telephone Number	E-Mail Address

Please complete the information requested above and sign below acknowledging receipt of Publication 4299, (11-2004), Privacy and Confidentiality-A Public Trust, and software license requirements.

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Sponsor Signature

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Date

#### Privacy Act Notice

The Privacy Act of 1974 requires that when we ask for information we tell you our legal right to ask for the information, why we are asking for it, and how it will be used. We must also tell you what could happen if we do not receive it, and whether your response is voluntary, required to obtain a benefit, or mandatory.

Our legal right to ask for information is 5 U.S.C. 301.

We are asking for this information to assist us in contacting you relative to your interest and/or participation in the IRS volunteer income tax preparation and outreach programs. The information you provide may be furnished to others who coordinate activities and staffing at volunteer return preparation sites or outreach activities. The information may also be used to establish effective controls, send correspondence and recognize volunteers.

Your response is voluntary. However, if you do not provide the requested information, the IRS may not be able to use your assistance in these programs.