

Consents to Use and Disclose Tax Return Information

Notice 2005-93

This notice contains a proposed revenue procedure that would provide guidance to tax return preparers regarding the format and content of consents to use and consents to disclose tax return information under proposed section 301.7216-3 of the Regulations on Procedure and Administration (26 CFR Part 301), which is being published contemporaneously with this notice. The proposed revenue procedure would also provide specific requirements for electronic signatures when a taxpayer executes an electronic consent to the use or disclosure of the taxpayer's tax return information.

The IRS requests comments on this proposed revenue procedure. In particular, the IRS requests comments regarding the methods for a tax return preparer to obtain a taxpayer's electronic signature on a consent to use or a consent to disclose tax return information. The comments should address procedures by which individuals commonly execute electronic signatures to provide knowing consent.

Written comments must be received by March 8, 2006. Comments should be submitted to: CC:PA:RU (Notice 2005-93), Room 5526, Internal Revenue Service, Ben Franklin Station, Washington, DC 20224. Alternatively, comments may be hand delivered between the hours of 8:00 AM and 5:00 PM to CC:PA:RU (NOT-132007-05), Courier's Desk, Internal Revenue Service, 1111 Constitution Ave., NW, Washington, DC. Comments may also be transmitted electronically via the following e-mail address: Notice.Comments@irs.counsel.treas.gov. Please include "Notice 2005-93" in the subject line of any electronic communications.

For further information regarding this notice, contact Dillon Taylor of the Office of Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division. Mr. Taylor may be contacted at 202-622-4940 (not a toll-free call).

APPENDIX (PROPOSED REVENUE PROCEDURE)

SECTION 1. PURPOSE

This revenue procedure provides guidance to tax return preparers regarding the format and content of consents to use and consents to disclose tax return information under section 301.7216-3 of the Regulations on Procedure and Administration (26 CFR Part 301). This revenue procedure also provides specific requirements for electronic signatures when a taxpayer executes an electronic consent to the use or disclosure of the taxpayer's tax return information.

SECTION 2. BACKGROUND

.01 Section 7216(a) prescribes a criminal penalty for tax return preparers who knowingly or recklessly disclose or use tax return information for a purpose other than preparing a tax return. A violation of section 7216 is a misdemeanor, with a maximum penalty of up to one year imprisonment or a fine of not more than \$1,000, or both, together with the costs of prosecution.

.02 Section 7216(b) establishes exceptions to the general rule and also authorizes the Secretary to promulgate regulations prescribing additional permitted disclosures and uses. Section 6713(a) prescribes a related civil penalty for disclosures and uses that constitute a violation of section 7216. The penalty for violating section 6713 is \$250 for each disclosure and use, not to exceed a total of \$10,000 for a calendar year. Section 6713(b) provides that the exceptions in section 7216(b) also apply to section 6713. Under section 7216(b), the provisions of section 7216(a) will not apply to any disclosure or use permitted under regulations prescribed by the Secretary.

.03 The regulations under section 7216 provide exceptions to the general rule. Section 301.7216-3 provides that, unless section 7216 or §301.7216-2 specifically permits the disclosure or use of tax return information, a tax return preparer may not disclose or use a taxpayer's tax

return information prior to obtaining a consent from the taxpayer. The consent must be knowing and voluntary. Section 301.7216-3(a)(3) provides that the Commissioner may, by revenue procedure, prescribe the form and content of consents, as well as the requirements for a valid signature on an electronic consent under section 7216. This revenue procedure provides those requirements.

SECTION 3. SCOPE

This revenue procedure applies to all tax return preparers, as defined in §301.7216-1(b)(2), who seek consent to disclose or use tax return information pursuant to §301.7216-3.

SECTION 4. FORM AND CONTENT OF A CONSENT TO USE OR A CONSENT TO DISCLOSE TAX RETURN INFORMATION

.01 Separate Written Document. Except as provided by §301.7216-3(c)(1) (special rule for multiple disclosures or uses within a single consent form), under §301.7216-3, a taxpayer's consent to each separate disclosure or use of tax return information must be contained on a separate written document, which can be furnished on paper or electronically.

.02 A consent on paper must be provided on one or more sheets of 8½ inch by 11 inch or larger paper. All of the text on each sheet of paper must pertain solely to the disclosure or use the consent authorizes, and the sheet or sheets, together, must contain all the elements described in section 4.04 and, if applicable, section 4.06. All of the text on each sheet of paper must also be in at least 12-point type (or 12 characters per inch).

.03 An electronic consent must be provided on one or more computer screens. All of the text on each screen must pertain solely to the disclosure or use the consent authorizes. The text of the consent must be easily readable and meet the following specifications: the size of the text must be at least the same size as, or larger than, the normal or standard body text used by the website or software package for direction, communications or instructions; and there must be sufficient contrast between the text

and background colors to ensure easy reading. In addition, each screen or, together, the screens must—

(1) contain all the elements described in section 4.04 and, if applicable, section 4.06,

(2) be able to be signed as required by section 5 and dated by the taxpayer,

(3) separate all paragraphs by a blank line, and

(4) be printable in a printer friendly format on 8½ inch by 11 inch paper.

.04 Requirements for Every Consent.

(1) Names and date. A taxpayer's consent to a tax return preparer's disclosure or use of tax return information must include the name of the tax return preparer, the name of the taxpayer, and the date on which the taxpayer signs the consent.

(2) Disclosure or use clearly stated. If a taxpayer consents to a disclosure of tax return information, the consent must identify the recipient or recipients of the tax return information and the intended purpose of the disclosure. If the taxpayer consents to use of tax return information, the consent must describe the particular use authorized. If the tax return preparer intends to use tax return information to generate solicitations for products or services other than tax return preparation, the consent must identify each specific type of product or service for which the tax return preparer may solicit use of the tax return information. Examples of products or services that must be identified, if solicited using tax return information, include, but are not limited to, refund anticipation loans, balance due loans, mortgage loans, mutual funds, individual retirement accounts, and life insurance.

(3) Purpose. A consent to use or a consent to disclose tax return information must clearly state that the information may not be used for any purpose not specifically prescribed in the consent.

(4) Identification of tax return information to be disclosed or used. The consent must specify the particular items of tax return information to be disclosed to each recipient or used by the return preparer.

(5) Contact telephone number for suspected violations of section 7216. The consent must include the contact telephone number for the Treasury Inspector General for Tax Administration (TIGTA), 1-800-366-4484. This telephone number allows taxpayers to report suspected unau-

thorized uses or disclosures of tax return information.

(6) Mandatory statements in the consent.

(a) A consent to disclose tax return information must contain the following statement in the following format:

We generally are not authorized to disclose your tax return information for purposes other than the preparation and filing of your tax return. We may disclose your tax return information to third parties only if you consent to each specific disclosure. Your consent is valid for one year.

Warning: Once your tax return information is disclosed to a third party per your consent, we have no control over what that third party does with your tax return information. If the third party uses or discloses your tax return information for purposes other than the purpose for which you authorized the disclosure, under Federal tax law, we are not responsible for that subsequent use or disclosure, and Federal tax law may not protect you from that disclosure.

(b) A consent to use tax return information must contain the following statement in the following format:

We generally are not authorized to use your tax return information for purposes other than the preparation and filing of your tax return. We may use your tax return information for other purposes only if you consent to each specific use. Your consent is valid for one year.

(c) All consents must contain the following statement in the following format:

If you believe that your rights have been violated

If you have any questions or concerns about your rights regarding the use or disclosure of your tax return information, visit www.irs.gov/advocate for more information, or contact the Taxpayer Advocate Service of the Internal Revenue Service at 1-877-777-4778.

If you believe we have used or disclosed your information without your permission, you may contact the Treasury Inspector General for Tax Administration at 1-800-366-4484.

(7) Mandatory statement in any consent to disclosure outside of the United States. If a tax return preparer to whom the tax return information is to be disclosed is located outside of the United States, the taxpayer's consent under §301.7216-3 prior to any disclosure is required. See §301.7216-2(c) and (d). All consents for disclosures of tax return information outside of the United States must contain the following statement in the following format:

This consent to disclose will result in your tax return information being disclosed to a tax return preparer located outside the United States.

(8) Affirmative consent. All consents must require the taxpayer's affirmative consent to a tax return preparer's disclosure or use of tax return information. A consent that requires the taxpayer to remove or "deselect" uses or disclosures that the taxpayer does not wish to be made, *i.e.*, an "opt-out" consent, is not permitted.

(9) Signature. All consents to use or disclose tax return information must be signed by the taxpayer.

(a) For consents on paper, the taxpayer's consent to a use or disclosure must contain the taxpayer's signature.

(b) For electronic consents, a taxpayer must sign the consent by any method prescribed in section 5, below.

.05 Special rule for multiple disclosures within a single consent form or multiple uses within a single consent form. Section 301.7216-3(c)(1) provides that a taxpayer can consent to multiple uses within the same written document, or multiple disclosures within the same written document. Multiple disclosure consents and multiple use consents must provide the taxpayer with the opportunity, within the separate written document, to affirmatively select each separate use or disclosure. Further, the taxpayer must be provided the information in section 4.04(2)-(4) for each separate use or disclosure.

.06 Disclosure of entire return. If, under §301.7216-3(c)(2), a consent autho-

rizes the disclosure of all information contained within a return, the consent must contain an explanation of the reasons why a consent authorizing a more limited disclosure of tax return information would not satisfy the purpose of the consent.

SECTION 5. ELECTRONIC SIGNATURES

.01 If a taxpayer furnishes consent to use or disclose tax return information electronically, the taxpayer must furnish the tax return preparer with an electronic signature that will verify that the taxpayer consented to the use or disclosure. The regulations under §301.7216-3(a) require that the consent be knowing and voluntary. Therefore, for an electronic consent to be valid, it must be furnished in a manner that ensures affirmative, knowing consent to each use or disclosure.

.02 A tax return preparer seeking to obtain a taxpayer's consent to the disclosure or use of tax return information must obtain the taxpayer's signature on the consent in one of the following manners:

(a) Assign a personal identification number (PIN) that is at least 6 characters long to the taxpayer when the taxpayer first starts using the tax preparation software. To consent to the use or disclosure of the taxpayer's tax return information, the taxpayer may type in the pre-assigned PIN as the taxpayer's signature authorizing the disclosure or use. A PIN may not be automatically furnished by the return preparation software so that the taxpayer only has to click a button for consent to be furnished. The taxpayer must affirmatively enter the PIN for the electronic signature to be valid; or

(b) Have the taxpayer type in the taxpayer's name and then hit "enter" to authorize the consent. The tax preparation software must not automatically furnish the taxpayer's name so that the taxpayer only has to click a button to consent. The taxpayer must affirmatively type the taxpayer's name for the electronic consent to be valid; or

(c) Any other manner in which the taxpayer affirmatively enters 6 or more characters that are unique to that taxpayer that can be used by the tax return preparer to verify the taxpayer's identity. For example, entry of the same information by which a taxpayer authorizes credit card

payment of preparation fees could be the type of information by which the taxpayer authorizes use or disclosure of tax return information.

SECTION 6. EXAMPLES

.01 The application of this revenue procedure is illustrated by the following examples:

(1) *Example 1.* Preparer P offers tax preparation services over the Internet. P wishes to use targeted banner advertisements (*i.e.*, electronic advertisements appearing on the computer screen based on the taxpayer's tax return information) during tax return preparation. P contracts with various corporations to advertise services and products not directly related to tax return preparation.

(a) P posts, in pertinent part, the following consent on the computer screen for taxpayers to indicate approval. If a taxpayer does not indicate approval, the tax return preparation software does not permit the taxpayer to use the software—

PRIVACY STATEMENT

Your privacy is very important to us at P. We are providing this statement to inform you about the types of information we collect from you, and how we may use or disclose that information in connection with the services we provide. This Privacy Statement describes the privacy practices of our company as required by applicable laws. . . . During the course of providing our services to you, we may offer you various other services that may be of interest to you based on our determination of your needs through analysis of your data. Your use of the services we offer constitutes a consent to our disclosure of tax information to the service providers. If at any time you wish to limit your receipt of promotional offers based upon information you provide, you may call us at the following. . . .

(b) Beneath this Privacy Statement, the following acknowledgment line appears next to two button images stating "yes" and "no:"

"I have read the Privacy Statement and agree to it by clicking here."

(c) If the taxpayer clicks "no," a message appears on the screen informing the taxpayer that tax return preparation will not proceed without the taxpayer agreeing to the company's Privacy Statement.

(d) P has failed to comply with the requirements of §301.7216-3 and this revenue procedure. (1) P has attempted to obtain consent from the taxpayer by making the use of the program contingent on the taxpayer's consent to P's use and disclosure of the taxpayer's tax return information for purposes other than tax preparation (*e.g.*, for use in displaying targeted banner advertisement). Thus, the consent is not voluntary, as required by §301.7216-3(a). (2) P has failed to identify the specific tax return information that it will use or disclose, as required by section 4.05, to identify the purposes of the uses and disclosures themselves, as required by section 4.04, and to the extent that P intends to disclose the entire return, P has failed to provide a consent containing an explanation why a more limited disclosure of tax return information would not satisfy the purpose of the consent, as required by section 4.06. (3) The single document attempts to have the taxpayer consent to both uses and disclosures, in violation of section 4.05. (4) P has not used the mandatory statements required by section 4.04(6) and has not provided a means for the taxpayer to electronically sign the consent in a form authorized by section 5. (5) The consent is not dated as required by section 4.04(1).

(2) *Example 2.* Preparer Q offers tax preparation services over the Internet and wishes to use targeted banner advertisements during tax return preparation. Q contracts with Bank A regarding the advertisement of Individual Retirement Accounts (IRAs), and with Bank B regarding the advertisement of refund anticipation loans (RALs). Preparer Q displays advertisements to the taxpayer only if the taxpayer's tax return information indicates that the services are relevant to the taxpayer (*i.e.*, they are targeted banner advertisements). A taxpayer using Q's software must enter a password to begin the process of preparing a return.

(a) Before the taxpayer starts providing tax return information, the following screen appears on Q's tax preparation program.

CONSENT TO USE OF TAX RETURN INFORMATION

We generally are authorized to use your tax return information only to prepare and file your tax return. We may use your tax return information for other purposes only if you consent to each specific use. Your consent is valid for one year.

For your convenience, Q has entered into arrangements with certain banks regarding the provision of two services that may interest you. The services are Individual Retirement Accounts (IRAs) and refund anticipation loans (RALs). To determine whether these services may be of interest to you, Q will need to use your tax return information.

If you would like Q to use your tax return information to determine whether these services are relevant to you while we are preparing your return, please check the corresponding box for the service(s) in which you are interested, provide the information requested below, and sign and date this consent to the use of your tax return information.

I, [INSERT NAME] authorize Q to use the information I provide regarding whether I contributed to an IRA for the 2006 tax year, and the amount I contributed to an IRA for the 2006 tax year, to determine whether to offer me an opportunity to invest in an IRA.

I, [INSERT NAME] authorize Q to use the information on my return for the 2006 tax year regarding whether I have overpaid my taxes and am entitled to a refund to determine whether to offer me a RAL.

Signature: [INSERT SIGNATURE AS PRESCRIBED UNDER SECTION 5]

Date: [INSERT DATE]

If you believe that your rights have been violated

If you have any questions or concerns about your rights regarding the use or disclosure of your tax return information, visit www.irs.gov/advocate for

more information, or contact the Taxpayer Advocate Service of the Internal Revenue Service at 1-877-777-4778 (a toll-free call).

If you believe we have used or disclosed your information without your permission, you may contact the Treasury Inspector General for Tax Administration at 1-800-366-4484 (a toll-free call).

(b) If the taxpayer selects one or both of the consents above, the taxpayer is directed to print the screen. Later, after the taxpayer has entered data reflecting that he is eligible for both a RAL and an IRA, the following screen is displayed:

CONSENT TO DISCLOSURE OF TAX RETURN INFORMATION

We generally are not authorized to disclose your tax return information to third parties. We may only disclose your tax return information to third parties if you consent to each specific disclosure. Your consent is valid for one year.

Warning: Once your tax return information is disclosed to a third party per your consent, we have no control over what that third party does with your tax return information. If the third party uses or discloses your tax return information for purposes other than the purpose for which you authorized the disclosure, we are not responsible for that unauthorized disclosure, and federal tax law may not protect that unauthorized disclosure.

You have indicated that you are interested in obtaining information on IRAs or RALs, or both. To provide you with this information, Q must forward your tax return information, as indicated below, to the banks that provide these services.

If you would like Q to disclose your tax return information to the banks providing these services, please check the corresponding box for the services in which you are interested, provide the information requested below, and sign and date your consent to the disclosure of your tax return information.

I, [INSERT NAME], authorize Q to disclose to A the information I provide regarding IRA contributions for the 2006 tax year, and/or the amount I contributed to an IRA for the 2006 tax year, so that A can provide information on obtaining an IRA or increasing my contribution to an IRA for the 2006 tax year.

I, [INSERT NAME], authorize Q to disclose to B the information on my return regarding whether I have overpaid my taxes and am entitled to a refund, and my social security number, so that B can determine whether I will qualify for a RAL for the 2006 tax year, and so that Bank B can provide information on obtaining a RAL for the 2006 tax year.

Signature: [INSERT SIGNATURE AS PRESCRIBED UNDER SECTION 5]

Date: [INSERT DATE]

If you believe that your rights have been violated

If you have any questions or concerns about your rights regarding the use or disclosure of your tax return information, visit www.irs.gov/advocate for more information, or contact the Taxpayer Advocate Service of the Internal Revenue Service at 1-877-777-4778 (a toll-free call).

If you believe we have used or disclosed your information without your permission, you may contact the Treasury Inspector General for Tax Administration at 1-800-366-4484 (a toll-free call).

If the taxpayer consents to the disclosure of the tax return information using the screen above, the taxpayer is directed to print the screen. Q will then transmit the relevant tax return information to the banks.

(c) These two consent documents, above, satisfy the requirements of §301.7216-3(c) and this revenue procedure for the use or disclosure of the information provided therein for the specific purposes stated.

SECTION 7. EFFECTIVE DATE

This revenue procedure is effective on [].

SECTION 8. DRAFTING INFORMATION

The principal author of this revenue procedure is Dillon Taylor of the Office of Associate Chief Counsel (Procedure and Administration), Administrative Provisions & Judicial Practice Division. For further information regarding this revenue procedure, contact [] at [] (not a toll-free call).
