

## **The Latest on Implementing Section 7216!**

For purposes of the revised section 7216 regulations (which became effective on January 1, 2009), CPAs should understand that, in general, they will not need to obtain written consents from their clients in the normal course of providing tax return preparation services and any related tax planning or accounting services. An informed and thoughtful implementation of these confidentiality rules is important however, so the AICPA has provided helpful guidance at its Tax Center which can be found at:

<http://tax.aicpa.org/Resources/Tax+Practice+Guides+and+Checklists/2008+Tax+Practice+Guides+and+Checklists/New+Section+7216+Regulations+Become+Effective.htm>

Many AICPA members are understandably concerned about areas of the regulations that appear to be unclear as to when section 7216 consents must be obtained. The AICPA is in active contact with the IRS about these issues, and is seeking further guidance from the Service to clarify such matters. While we are committed to this dialogue with the Service, we feel it is important to point out those areas of practice for preparers where we believe the regulations are clear and written consent is not required. Thus, as a general matter, a preparer does not need to obtain a section 7216 consent when:

- Providing tax return preparation services and any related tax planning or accounting services, and discussing such services with the client, so long as the preparer does not expect to share tax return information with a third party or another preparer (whether or not within the same firm) located outside of the United States.
- Mailing a newsletter (directly from the preparer's office) that focuses only on and tax return preparation and related tax planning or accounting matters.
- Utilizing a second preparer to perform "auxiliary services" related to the processing of the tax return, services that generally involve the mechanical processing of the return.
- Updating the accounting firm's tax preparation software; or when disclosing return information in connection with the programming, maintenance, repair, testing, or procurement of equipment or software used in tax return preparation.
- Disclosing or using tax return information with the IRS, state, or local tax authorities for purposes of return preparation or handling an audit.
- Processing or collecting fees for services.
- Maintaining or retaining client records, including copies of returns.

We are working with the IRS to get additional guidance on the many issues we have become aware of. Without their official guidance we can't be sure that the thoughts below are technically accurate. However, the items below appear to be reasonable interpretations:

- If a client does not respond to a request for consent, you should be able to send additional requests or call the client to encourage them to complete the form. It is only when the client "declines a request for consent" that you are prohibited from making further attempts to obtain the approval. However, see Treas. Reg. section 301.7216-3(b)(3),

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which suggests that the preparer may make requests for consent involving subsequent year tax returns.

- Although the written consent must be a document separate from the engagement letter, it can be included in the same envelope.
- Until we receive further clarification from the IRS, it seems prudent to avoid articles in newsletters that offer or solicit services that extend beyond normal tax services.
- An approval can be effective for multiple years if so specified in the written consent.

We will continue to communicate with members as information develops.