

Section 7216 Updated Rules for Tax Preparers (Updated 12/18/2008)

New regulations under Internal Revenue Code Section 7216, Disclosure or Use of Tax Information by Preparers of Returns, become effective January 1, 2009. The new regulations update regulations that have been substantially unchanged since the 1970s, and give taxpayers greater control over their personal tax return information. 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.

Revenue Procedure 2008-35 supplements the regulations, in particular Treas. Reg. Section 301.7216-3, and provides specific form and content guidance to tax return preparers for obtaining consents to disclose and consents to use taxpayer data in both the paper and electronic environments. Generally, tax preparers must obtain the signed consent of the taxpayer on paper or electronically before they can disclose taxpayer return information to anyone or use it for any purpose other than in the context of preparing and filing the return. Separate consents are required for disclosure(s) and use(s). Consents must:

- 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.

The updated regulations apply to paid preparers, software developers, Electronic Return Originators, and other persons or entities engaged in tax return preparation services or services that are auxiliary to return preparation. They also apply to most volunteer tax preparers, for example Volunteer Income Tax Assistance (VITA) and Tax Counseling for the Elderly (TCE) volunteers and employees and contractors employed by tax preparation companies in a support role.

Violations could result in imprisonment for up to one year, a fine of not more than \$1,000, or both, for each violation.