

[4830-01-p]

DEPARTMENT OF TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9478]

RIN 1545-BI86

Amendments to the Section 7216 Regulations--Disclosure or Use of Information by Preparers of Returns

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations that provide rules relating to the disclosure and use of tax return information by tax return preparers.

These regulations provide updated guidance affecting tax return preparers regarding the use of information related to lists for solicitation of tax return business; the disclosure or use of statistical compilations of data under section 7216 of the Internal Revenue Code (Code) by a tax return preparer in connection with, or in support of, a tax return preparer's tax return preparation business, including identification of additional limited circumstances when a tax return preparer who compiles statistical information may disclose the compilation without taxpayer consent, and the placement of additional restrictions on the content of the compilation that may be disclosed under those circumstances without taxpayer consent; and the disclosure or use of information for the purpose of performing conflict reviews. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed

rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: Effective Date: These regulations are effective on **[INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**.

Applicability Date: For date of applicability, see §301.7216-2T(s).

FOR FURTHER INFORMATION CONTACT: Molly K. Donnelly, (202) 622-4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

### **Background**

This document amends 26 CFR part 301 to provide modified rules relating to the ability of a tax return preparer to use tax return information for the purposes of compiling, maintaining and using lists for solicitation of tax return business under §301.7216-2(n), disclose and use statistical compilations of data described in §301.7216-1(b)(3)(i)(B) under §301.7216-2(o), and disclose and use tax return information for the purpose of performing conflict reviews under §301.7216-2(p), without taxpayer consent. These three paragraphs are being modified to expand the ability of tax return preparers to disclose or use certain limited tax return information under specific and limited circumstances in a manner that is expected to benefit taxpayers, tax return preparers, and the general public, as more fully described in the Explanation of Provisions section of this preamble. One set of these modifications, those to §301.7216-2(o), are being made following the issuance of Notice 2009-13 and the receipt of comments submitted in response to that Notice, while the modifications to the other two paragraphs are being made as a result of the Treasury Department's and the

IRS's efforts to regularly review the effect of the recently issued final regulations on taxpayers and tax return preparers. In the accompanying and cross-referenced notice of proposed rulemaking, the Treasury Department and the IRS request comments on the proposed rules from all interested parties.

On January 7, 2008, the Treasury Department and the IRS issued final regulations under section 7216 (TD 9375) (73 FR 1058) applicable to disclosures or uses of tax return information occurring on or after January 1, 2009. The final regulations replaced previously issued final regulations that remained applicable to disclosures or uses of tax return information occurring prior to January 1, 2009. The final regulations included §301.7216-1(b)(3)(i)(B) which, for disclosures and uses of tax return information occurring on or after January 1, 2009, provides that tax return information includes statistical compilations of tax return information. The final regulations included §301.7216-2(n), which provides that tax return preparers may use, without taxpayer consent, certain limited taxpayer contact information constituting tax return information for the purposes of compiling, maintaining, and using lists for the solicitation of tax return business, incorporating its predecessor, §301.7216-2(m), but providing a minor expansion of the contact information allowed to be used. The final regulations included the addition of new §301.7216-2(o), which describes the limited circumstances when a tax return preparer may use tax return information to produce statistical compilations, and when the preparer may use or disclose the produced statistical compilation without written consent. The final regulations included §301.7216-2(p), which provides that tax return preparers may disclose and use tax return information without taxpayer consent in the performance of quality or peer

reviews, incorporating its predecessor, §301.7216-2(o), with only minor, non-technical adjustments.

The Treasury Department and the IRS subsequently issued Notice 2009-13 (2009-6 IRB 447 (February 9, 2009)) (see §601(d)(2)(ii)(b)), to provide interim guidance relating to the ability of a tax return preparer to disclose and use statistical compilations of anonymous tax return information in support of a tax return preparer's tax return preparation business. The Notice provides guidance on the tax return information a tax return preparer may use to compile anonymous statistical information, and on the circumstances when the tax return preparer may disclose the anonymous statistical information without taxpayer consent. Notice 2009-13 sets forth rules to be applied by the Treasury Department and the IRS during 2009 while they consider whether the interim guidance should be adopted by regulations or further modified, taking into account public comments submitted in response to the Notice.

Written comments were received in response to the Notice. All comments were considered and are available for public inspection upon request. This preamble summarizes the responsive comments received by the Treasury Department and the IRS.

These temporary regulations modify the rules under §§301.7216-2(n), 301.7216-2(o), and 301.7216-2(p), and supersede the interim guidance provided by Notice 2009-13.

## **Summary of Comments in Response to Notice 2009-13**

### **1. Purpose and use.**

One commentator recommended that the regulations specifically provide that all tax preparation firms may use tax return information to connect taxpayers to free government programs and services, provided they have obtained the consent of their clients. This comment was not adopted. Under the regulations in force, this use would be permitted because the tax return preparer obtained the consent of its clients. Consents must conform to the requirements of §301.7216-3 of the regulations and any other guidance issued pursuant to §301.7216-3.

## 2. Disclosure requirements.

Several commentators recommended that the prohibition on disclosing cells containing data from fewer than 25 tax returns be eliminated as long as the data is anonymous and free of all taxpayer-identifying information. Some commentators recommended that return preparers be able to disclose, without consent, all aggregate data that is stripped of personal identifying information, noting that volunteer tax preparation programs utilize aggregate data to demonstrate and track the tax preparation and financial service needs of their clients. Additional commentators recommended that the 25 tax return threshold be modified to allow for the disclosure of cells containing data from ten or more tax returns. These commentators indicated that removal of all taxpayer-identifying information provides sufficient taxpayer protection and implied that it may not be feasible for tax return preparers who operate small tax return preparation businesses to always produce a statistical compilation that meets the 25 tax return threshold. These recommendations were adopted in part, and the temporary regulations now permit the disclosure of cells containing data from ten or more tax returns.

### 3. Research and public policy discussions.

One commentator recommended that, for purposes of the guidance, the term “tax return preparation business” should include “bona fide research or public policy discussions (i) concerning state or federal taxation or (ii) utilizing data acquired during the tax return preparation process.” The commentator was concerned that the interim guidance would inhibit tax return preparers from cooperating with scholars or sharing anonymous data with bona fide academic researchers studying consumer financial behavior because this topic arguably might not be viewed as supporting a tax return preparation business. This comment was considered and the temporary regulations now clarify that a tax return preparer is allowed to disclose an anonymous statistical compilation for bona fide research or public policy discussions concerning state or federal taxation or requiring data acquired during the tax return preparation process.

One commentator stated that government agencies’ presentation of aggregated refund data and other statistical compilations in press releases, public presentations, reports, web sites, or other electronic communications should automatically fall within the meaning of bona fide research and public policy discussions. This recommendation was not adopted because it would not be appropriate in this context to create particularized rules for government agencies, and inclusion of this specific circumstance in the exception might require the creation of an exhaustive list of the circumstances that would be considered bona fide research or public policy discussions. Instead, tax return preparers must determine on a case-by-case basis whether a disclosure is in support of bona fide research or public policy discussions.

### 4. Sale of a statistical compilation.

One commentator recommended that the regulations should allow for the disclosure of a statistical compilation in conjunction with the sale or disposition of a tax return preparation business only when the entire tax return preparation business is being sold or disposed. This recommendation was not adopted because circumstances can exist when a tax return preparer may in good faith sell or dispose of less than the preparer's entire tax return preparation business.

### **Explanation of Provisions**

#### 1. §301.7216-2(n).

The Treasury Department and the IRS are amending the regulations under section 7216 to provide a limited expansion of the information tax return preparers may, without taxpayer consent, use and include in lists for solicitation of tax return business pursuant to §301.7216-2(n). The regulations also clarify that lists for solicitation of tax return business may not be used to solicit non-tax return preparation services. Finally, the regulations clarify the meanings of the phrases “tax information” and “in conjunction with the sale or other disposition of the compiler's tax return business” for purposes of the exception provided by §301.7216-2(n).

The current regulations allow a tax return preparer to compile and maintain a list for solicitation of tax return business consisting solely of the names, addresses, e-mail addresses, and phone numbers of taxpayers whose tax returns the preparer has prepared or processed. The current regulations allow a tax return preparer to use this list to contact the taxpayers on the list to offer “tax information or additional tax return preparation services to such taxpayers,” and limit the transfer of the list to transfers occurring “in conjunction with the sale or other disposition of the compiler's tax return

preparation business.” Section 301.7216-2(n) in its current form is identical to its form in prior versions of the regulations, with the exception that an additional type of information, e-mail addresses, was added to the short list of information allowed to be included in §301.7216-2(n) lists.

Upon further consideration, the Treasury Department and the IRS conclude that §301.7216-2(n) should be amended, in the form of temporary regulations, to provide additional flexibility to tax return preparers and benefits to taxpayers without compromising the rights of taxpayers to control the use or disclosure of their tax return information. These regulations expand the information that may be compiled and maintained in a list for solicitation of tax return business to include the taxpayer entity classification or type, including individual status, and taxpayer income tax return form number (for example, Form 1040, “U.S. Individual Income Tax Return”, or Form 1120, “U.S. Corporation Income Tax Return”). Determining the information that may be used to provide targeted newsletters and marketing under §301.7216-2(n) requires balancing the benefits from taxpayers receiving the tax information most relevant to them against the ability of taxpayers to control the use of their tax return information. The Treasury Department and the IRS conclude that the current amendments made to §301.7216-2(n) strike the proper current balance between these competing interests, but also recognize that future information and needs may require permitting additional information to be included in the list maintained under §301.7216-2(n). Accordingly, the regulations are amended to allow the IRS to identify additional information that may be included in the list by issuing guidance to be published in the Internal Revenue Bulletin.

These regulations clarify the phrase “tax information” by replacing that phrase with the phrase “tax information and general business or economic information or analysis for educational purposes.” It is contemplated that tax information includes explanations of current developments in tax law. The regulations also clarify that a list for solicitation of tax return business may not be used to solicit non-tax return preparation services.

The additions to the tax return information allowed to be compiled and maintained in §301.7216-2(n) lists, along with the clarification of the phrase “tax information,” will provide additional flexibility to tax return preparers permitting them to more efficiently and effectively furnish relevant tax information and lawful solicitations to their taxpayer clients, and will benefit taxpayers by helping ensure that the taxpayers receive only information that may be useful to them and that specifically addresses tax issues relevant to them, thus improving taxpayer education and awareness and reducing the amount of needless information being received by taxpayers. By expressly prohibiting the use of these lists to solicit non-tax return preparation services, the regulation makes clear that the exception provided by §301.7216-2(n) is limited to solicitations of tax return preparation services only. The phrase “in conjunction with the sale or other disposition of the compiler’s tax return preparation business” is clarified to include due diligence performed in contemplation of a sale or other disposition of a tax return preparation business. The regulations also clarify that tax return information made available to a potential purchaser for due diligence purposes constitutes a disclosure of that information and not a transfer of that information.

The Treasury Department and the IRS have also amended the regulations to clarify that a person who is a tax return preparer solely because he provides auxiliary services to another tax return preparer may not use the tax return information he receives from such other tax return preparer to compile and maintain for his own use a list of taxpayers under §301.7216-2(n). For example, a software company could in some cases market tax return preparation software to taxpayers directly and to tax return preparers. In connection with auxiliary services provided to tax return preparers, the software provider may receive information regarding the taxpayer clients of the tax return preparers. In such circumstances, the software provider could not use the tax return information it received from tax return preparers in the performance of auxiliary services to compile a list under §301.7216-2(n) to market its software directly to the clients of the tax return preparers.

In light of these considerations, the Treasury Department and the IRS, pursuant to these regulations, amend §301.7216-2(n) of the final regulations published on January 7, 2008, as described in this preamble.

2. §301.7216-2(o).

The Treasury Department and the IRS are amending the regulations under section 7216 to provide additional exceptions to the general rule that a tax return preparer may not disclose or use statistical compilations of tax return information without taxpayer consent. Section 301.7216-2(o) currently prohibits the disclosure of statistical compilations unless the disclosure is made in order to comply with financial accounting or regulatory reporting requirements or occurs in conjunction with the sale or other disposition of the compiler's tax return preparation business; therefore, under the

current regulations, tax return preparers may not disclose statistical compilations for other purposes that may provide benefits to taxpayers generally or to the public as a whole.

Responding to public comments received in response to Notice 2009-13, the Treasury Department and the IRS conclude that §301.7216-2(o) should be amended, in the form of temporary regulations, to allow a tax return preparer to disclose statistical compilations of tax return information without taxpayer consent for additional limited purposes, with certain additional requirements.

While taxpayer consent regarding disclosure or use is a primary focus of the section 7216 regulations, the flexibility resulting from these temporary regulations will enable tax return preparers to disclose anonymous data for limited purposes that may provide benefit to both taxpayers in general and the public at large. Anonymous statistical data disclosed within the constraints provided by these temporary regulations can be used by tax return preparers for marketing purposes and to assist taxpayers in making informed choices about tax return preparers. The availability of anonymous statistical data can be useful from a public policy perspective, as the use and availability of such data can assist lawmakers, academics, non-profits, and other agencies in the facilitation of sound tax policy analysis and decisions. In addition, volunteer tax return preparers who provide free tax return preparation services to low- and moderate-income taxpayers and families would be able to demonstrate the impact of their efforts in order to obtain and administer funding necessary for their continued operation.

One concern that has been expressed regarding the disclosure of statistical compilations of tax return information by tax return preparers is that incentives will be

created that encourage maximization of credits or refunds at the expense of tax return accuracy. To address this concern, while the amendment provides additional limited exceptions to the requirement that taxpayer consent be obtained in order to disclose or use tax return information, the temporary regulations prohibit, in the context of marketing or advertising, the use or disclosure of statistical compilations, or a part thereof, that identify dollar amounts of refunds, credits, or deductions associated with tax returns, whether or not the data are statistical, averaged, aggregated, or anonymous. The IRS will continue to rely on all existing enforcement powers to address concerns regarding advertising and marketing claims by tax return preparers.

In light of these considerations, the Treasury Department and the IRS, pursuant to these regulations, amend §301.7216-2(o) of the final regulations published on January 7, 2008. The temporary regulations require that any disclosure of a statistical compilation, other than to satisfy reporting requirements or in conjunction with the disposition of a tax return business, be anonymous as to taxpayer identity, meaning that it must be in a form which cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer. Under these circumstances, the temporary regulations prohibit the disclosure of statistical compilations with cells containing data from fewer than ten tax returns. In addition to the disclosure exceptions set forth currently in §301.7216-2(o), the temporary regulations authorize the disclosure by a tax return preparer in conjunction with bona fide research or public policy discussions concerning state or federal taxation or requiring data acquired during the tax return preparation process, and to provide tax information to the public regarding tax return preparation services. The temporary regulations allow section 501(c) organizations whose program

services include the free preparation of tax returns to disclose statistical compilations in order to comply with reporting requirements in connection with the receipt of grants or to facilitate the solicitation of grants. The temporary regulations also allow lawful recipients of statistical compilations to disclose or use such tax return information, subject to the provisions of §301.7216-2T(o). The temporary regulations continue to allow the disclosure of statistical compilations in order to comply with financial accounting or regulatory reporting requirements or in conjunction with the sale or other disposition of the compiler's tax return preparation business. Finally, the temporary regulations prohibit, in the context of marketing or advertising, use or disclosure of statistical compilations, or a part thereof, that identify dollar amounts of refunds, credits, or deductions associated with tax returns, or percentages relating thereto, whether or not the data are statistical, averaged, aggregated, or anonymous.

3. §301.7216-2(p).

The Treasury Department and the IRS are amending the regulations under section 7216 to clarify that tax return preparers may use and disclose tax return information to the extent necessary to accomplish a conflict of interest review undertaken to comply with the requirements established by any federal, state, or local law, agency, board, or commission, or by a professional association ethics committee or board, to identify, evaluate, and monitor actual or potential legal and ethical conflicts of interest that may arise when a tax return preparer or tax return preparation business is employed or acquired by another tax return preparer or tax return preparation business, or when a tax return preparer is considering engaging a new client.

Upon further consideration, the Treasury Department and the IRS conclude that §301.7216-2(p) should be amended, in the form of temporary regulations, to clarify that tax return preparers may use and disclose tax return information to the extent necessary to accomplish conflict reviews without compromising the rights of taxpayers to control the use or disclosure of their tax return information. Conflict reviews allow tax return preparers to fulfill legal and ethical requirements to identify and avoid client conflicts of interest. Conflict reviews also benefit taxpayers because these reviews provide taxpayers with the knowledge and comfort that their tax return preparers are acting in the taxpayers' best interests when providing tax return preparation services to them.

These regulations amend §301.7216-2(p) by adding an exception to the written consent rules to allow disclosures of tax return information by a tax return preparer without taxpayer consent for the purpose of conducting conflict reviews, but only to the extent necessary to accomplish the reviews. For example, if the tax return preparer only needs to disclose the names of taxpayers, and nothing more, to allow the conflict review to be completed, then the tax return preparer shall not disclose any tax return information other than the taxpayers' names.

The regulations describe conflict reviews to include reviews that are undertaken to comply with requirements established by any federal, state, or local law, agency, board or commission, or by a professional association ethics committee or board, to either identify, evaluate, and monitor actual or potential legal and ethical conflicts of interest that may arise when a tax return preparer is employed or acquired by another tax return preparer, or to identify, evaluate, and monitor actual or potential legal and

ethical conflicts of interest that may arise when a tax return preparer is considering engaging a new client. The regulations contemplate that the information necessary to accomplish a conflict review shall be disclosed to and used by only those persons permitted to be involved in the conflict review as described in the applicable law or regulations or as authorized by the relevant agency, board, commission, or professional association. The regulations also contemplate that, in order for tax return preparers to fulfill the required conflict reviews, circumstances may require the preparer to disclose the information necessary to perform a conflict review outside of the United States or a territory or possession of the United States. If disclosure outside of the United States is required to conduct a conflict review, the disclosure is authorized by these regulations provided the disclosing and receiving tax return preparers have procedures in place that are consistent with good business practices and designed to maintain the confidentiality of the disclosed information. The regulations also include specific restrictions on the further use and disclosure of information disclosed under this exception.

In light of these considerations, the Treasury Department and the IRS, pursuant to these regulations, amend §301.7216-2(p) of the final regulations published on January 7, 2008, as described in this preamble.

#### 4. Conclusion.

The Treasury Department and the IRS anticipate that allowing tax return preparers to disclose and use the limited tax return information and anonymous statistical compilations for the limited purposes previously cited should provide the taxpayer and the public the policy benefits discussed above. The Treasury Department and the IRS also conclude that the amendments to §§301.7216-2(n), 301.7216-2(o),

and 301.7216-2(p) appropriately balance concerns regarding safeguarding of sensitive tax return information against the tax industry's need to evaluate and use or disclose tax return information. In a separate notice of proposed rulemaking published with these regulations, the Treasury Department and IRS invite comments on the proposed rules.

### **Effect on Other Documents**

The following publication is obsolete on or after **[INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**: Notice 2009-13 (2009-6 IRB 447).

### **Special Analyses**

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations because they are excepted from the notice and comment requirements of section 553(b) and (c) of the Administrative Procedure Act by section 7805(e) of the Internal Revenue Code and under the interpretative rule and good cause exceptions provided by sections 553(b)(3)(A) and (B) of that Act. These regulations are necessary to provide tax return preparers and taxpayers with immediate guidance on the application of the section 7216 rules regarding permissible disclosures and uses without the consent of the taxpayer, disclosures and uses that are currently required and necessary to allow the ongoing and beneficial educational, informational, operational, and funding efforts of tax return preparers and taxpayers to prepare for the imminent tax filing season, and to allow tax return preparers to comply with all legal and ethical requirements placed upon them by

relevant government or professional agencies, boards, commissions or committees. These regulations are intended to provide additional limited exceptions to, and relief from, the rules prohibiting disclosure of tax return information, including statistical compilations of tax return information and information necessary to accomplish conflict reviews, because these regulations provide tangible benefits to both taxpayers and tax return preparers and appropriately balance concerns regarding safeguarding of sensitive tax return information with appropriate disclosures and uses of that information. In addition, the regulations regarding §301.7216-2(o) have been publicly noticed and subject to comment through the publication of Notice 2009-13. For these reasons good cause exists for dispensing with notice and public comment pursuant to section 553(b) and (c) of the Administrative Procedure Act (5 U.S.C. chapter 5). For applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), refer to the Special Analyses section of the preamble to the cross-referenced notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**. Pursuant to section 7805(f) of the Internal Revenue Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

#### **Drafting Information**

The principal author of these regulations is Molly K. Donnelly, Office of the Associate Chief Counsel (Procedure and Administration).

#### **List of Subjects in 26 CFR Part 301**

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

## Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

### PART 301--PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Par. 2. Section 301.7216-0 is amended by revising the entries for §301.7216-2, paragraphs (n), (o), and (p) to read as follows:

#### §301.7216-0 Table of contents.

\* \* \* \* \*

#### §301.7216-2 Permissible disclosures or uses without consent of the taxpayer.

\* \* \* \* \*

(n) [Reserved]. For further guidance, see entry for §301.7216-2T(n).

(o) [Reserved]. For further guidance, see entry for §301.7216-2T(o).

(p) [Reserved]. For further guidance, see entry for §301.7216-2T(p).

\* \* \* \* \*

Par. 3. Section 301.7216-0T is added to read as follows:

#### §301.7216-0T Table of contents.

This section lists captions contained in §301.7216-2T.

#### §301.7216-2T Permissible disclosures or uses without consent of the taxpayer

(temporary).

(a) through (m) [Reserved]. For further guidance, see entries for §301.7216-2(a) through (m).

(n) Lists for solicitation of tax return business.

(o) Producing statistical information in connection with tax return preparation business.

(p) Disclosure or use of information for quality, peer, or conflict reviews.

(q) through (r) [Reserved]. For further guidance, see entries for §301.7216-2(q) through (r).

(s) Effective/applicability date.

(t) Expiration date.

Par. 4. Section 301.7216-2 is amended by revising paragraphs (n), (o), and (p) to read as follows:

§301.7216-2 Permissible disclosures or uses without consent of the taxpayer.

\* \* \* \* \*

(n) [Reserved]. For further guidance, see §301.7216-2T(n).

(o) [Reserved]. For further guidance, see §301.7216-2T(o).

(p) [Reserved]. For further guidance, see §301.7216-2T(p).

\* \* \* \* \*

Par. 5. Section 301.7216-2T is added to read as follows:

§301.7216-2T Permissible disclosures or uses without consent of the taxpayer (temporary).

(a) through (m) [Reserved]. For further guidance, see §301.7216-2(a) through (m).

(n) Lists for solicitation of tax return business. (1) A tax return preparer, other than a person who is a tax return preparer solely because the person provides auxiliary services as defined in §301.7216-1(b)(2)(i)(B), may compile and maintain a separate list containing solely the names, addresses, e-mail addresses, phone numbers, taxpayer entity classification (including “individual” or the specific type of business entity), and income tax return form number of taxpayers whose tax returns the tax return preparer has prepared or processed. The Internal Revenue Service may issue guidance, by publication in the Internal Revenue Bulletin (see §601.601(d)(2)(ii)(b)), describing other types of information that may be included in a list compiled and maintained pursuant to this paragraph. This list may be used by the compiler solely to contact the taxpayers on

the list for the purpose of providing tax information and general business or economic information or analysis for educational purposes, or soliciting additional tax return preparation services. The list may not be used to solicit any service or product other than tax return preparation services. The compiler of the list may not transfer the taxpayer list, or any part thereof, to any other person unless the transfer takes place in conjunction with the sale or other disposition of the compiler's tax return preparation business. Due diligence conducted prior to a proposed sale of a compiler's tax return preparation business is in conjunction with the sale or other disposition of a compiler's tax return preparation business and will not constitute a transfer of the list if conducted pursuant to a written agreement that requires confidentiality of the tax return information disclosed and expressly prohibits the further use or disclosure of the tax return information for any purpose other than that related to the purchase of the tax return preparation business. The tax return information submitted for the purpose of due diligence as authorized in this paragraph is a disclosure of tax return information subject to the provisions of this section. A person who acquires a taxpayer list, or a part thereof, in conjunction with a sale or other disposition of a tax return preparation business is subject to the provisions of this paragraph with respect to the list. The term list, as used in this paragraph (n), includes any record or system whereby the names and addresses of taxpayers are retained. The provisions of this paragraph (n) also apply to the transfer of any records and related papers to which this paragraph (n) applies.

(2) Examples. The following examples illustrate this paragraph (n):

Example 1. Preparer A is a tax return preparer as defined by §301.7216-1(b)(2)(i)(A). Preparer A's office is located in southeast Pennsylvania, and Preparer A

prepares federal and state income tax returns for taxpayers who live in Pennsylvania, New Jersey, Maryland, and Delaware. Preparer A maintains a list of taxpayer clients containing the information allowed by this paragraph (n). Preparer A provides quarterly state income tax information updates to his individual taxpayer clients by e-mail or U.S. Mail. To ensure that his clients only receive the information updates that are relevant to them, Preparer A uses his list to direct his outreach efforts towards clients by zip code and income tax return form number (Form 1040 and corresponding state income tax return form number). Preparer A may use the list information in this manner without taxpayer consent because he is providing tax information for educational or informational purposes and is targeting clients based solely upon tax return information that is authorized by this paragraph (n), by zip code, which is part of a taxpayer's address, and by income tax return form number. Preparer A also may deliver this information to his clients by e-mail or by U.S. Mail without taxpayer consent because those delivery methods use information authorized by this paragraph (n).

Example 2. Preparer B is a tax return preparer as defined by §301.7216-1(b)(2)(i)(A). Preparer B maintains a list of taxpayer clients containing the information allowed by this paragraph (n). Preparer B provides monthly federal income tax information updates in the form of a newsletter to all of her taxpayer clients by e-mail or U.S. Mail. When Preparer B hires a new employee, she announces each hire in the newsletter for the month that follows the hiring. Each announcement includes a photograph of the new employee, the employee's name, the employee's telephone number, a brief listing of the employee's qualifications, and a brief listing of the employee's employment responsibilities. Preparer B may use the tax return information described in this paragraph (n) in this manner without taxpayer consent because she is providing tax information for educational or informational purposes, to provide general federal income tax information updates. Preparer B may include the new employee announcements in the form described because this is considered tax information for educational or informational purposes, provided the announcements do not contain solicitations for non-tax return preparation services. Preparer B also may deliver this information to her clients by e-mail or by U.S. Mail without taxpayer consent because those delivery methods use information authorized by this paragraph (n).

(o) Producing statistical information in connection with tax return preparation business. (1) A tax return preparer may use tax return information, subject to the limitations specified in this paragraph (o), to produce a statistical compilation of data described in §301.7216-1(b)(3)(i)(B). The purpose and use or disclosure of the statistical compilation must relate directly to the internal management or support of the tax return preparer's tax return preparation business, or to bona fide research or public policy discussions concerning state or federal taxation or requiring data acquired during

the tax return preparation process. A tax return preparer may not disclose the compilation, or any part thereof, to any other person unless disclosure of the statistical compilation is anonymous as to taxpayer identity, does not disclose cells containing data from fewer than ten tax returns, and is in direct support of the tax return preparer's tax return preparation business or of bona fide research or public policy discussions concerning state or federal taxation or requiring data acquired during the tax return preparation process. A statistical compilation is anonymous as to taxpayer identity if it is in a form which cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer. For purposes of this paragraph, marketing and advertising is in direct support of the tax return preparer's tax return preparation business provided the marketing and advertising is not false, misleading, or unduly influential. This paragraph, however, does not authorize the use or disclosure in marketing or advertising of any statistical compilations, or part thereof, that identify dollar amounts of refunds, credits, or deductions associated with tax returns, or percentages relating thereto, whether or not the data are statistical, averaged, aggregated, or anonymous. Disclosures made in support of fundraising activities conducted by Volunteer Return Preparation programs and other organizations described in section 501(c) of the Internal Revenue Code (Code) in direct support of their tax return preparation businesses are not marketing and advertising under this paragraph. A tax return preparer who produces a statistical compilation of data described in §301.7216-1(b)(3)(i)(B) may disclose the compilation in order to comply with financial accounting or regulatory reporting requirements whether or not the statistical compilation is anonymous as to taxpayer identity or discloses cells containing data from fewer than ten tax returns.

A tax return preparer may not sell or exchange for value a statistical compilation of data described in §301.7216-1(b)(3)(i)(B), in whole or in part, except in conjunction with the transfer of assets made pursuant to the sale or other disposition of the tax return preparer's tax return preparation business. The provisions of paragraph (n) of this section regarding the transfer of a taxpayer list also apply to the transfer of any statistical compilations of data to which this paragraph applies. A person who acquires a statistical compilation, or a part thereof, pursuant to the operation of this paragraph (o) or in conjunction with a sale or other disposition of a tax return preparation business, is subject to the provisions of this paragraph with respect to the compilation.

(2) Examples. The following examples illustrate this paragraph (o):

Example 1. Preparer A is a tax return preparer as defined by §301.7216-1(b)(2)(i)(A). In 2009, A used tax return information to produce a statistical compilation of data for both internal management purposes and to support A's tax return preparation business. The statistical compilation included a cell containing the information that A prepared 32 S corporation tax returns in 2009. In 2010, A decides to embark upon a new marketing campaign emphasizing its experience preparing small business tax returns. In the campaign, A discloses the cell containing the number of S corporation tax returns prepared in 2009. A's disclosure does not include any information that can be associated with or that can identify any specific taxpayers. A may disclose the anonymous statistical compilation without taxpayer consent.

Example 2. Preparer B is a tax return preparer as defined by §301.7216-1(b)(2)(i)(A). In 2010, in support of B's tax return preparation business, B wants to advertise that the average tax refund obtained for its clients in 2009 was \$2,800. B may not disclose this information because it contains a statistical compilation reflecting average refund amounts.

Example 3. Preparer C is a tax return preparer as defined by §301.7216-1(b)(2)(i)(A) and is a Volunteer Income Tax Assistance program. In 2010, in support of C's tax return preparation business, C submits a grant application to a charitable foundation to fund C's operations providing free tax return preparation services to low- and moderate-income families. In support of C's request, C includes anonymous statistical data from cells containing data from ten or more tax returns showing that, in 2009, C provided services to 500 taxpayers, that 95 percent of the taxpayer population served by C received the Earned Income Tax Credit (EITC), and that the average amount of the EITC received was \$3,300. Despite the fact that this information

constitutes an average credit amount, C may disclose the information to the charitable foundation because disclosures made in support of fundraising activities conducted by Volunteer Income Tax Assistance programs and other organizations described in section 501(c) of the Code in direct support of their tax return preparation business are not considered marketing and advertising for purposes of §301.7216-2(o)(1).

Example 4. Preparer D is a tax return preparer as defined by §301.7216-1(b)(2)(i)(A). In December 2009, D produced an anonymous statistical compilation of tax return information obtained during the 2009 filing season. In 2010, D wants to disclose portions of the anonymous statistical compilation from cells containing data from ten or more tax returns in connection with the marketing of its financial advisory and asset planning services. D is required to receive taxpayer consent under §301.7216-3 before disclosing the tax return information contained in the anonymous statistical compilation because the disclosure is not being made in support of D's tax return preparation business.

(p) Disclosure or use of information for quality, peer, or conflict reviews. (1) The provisions of section 7216(a) and §301.7216-1 shall not apply to any disclosure for the purpose of a quality or peer review to the extent necessary to accomplish the review. A quality or peer review is a review that is undertaken to evaluate, monitor, and improve the quality and accuracy of a tax return preparer's tax preparation, accounting, or auditing services. A quality or peer review may be conducted only by attorneys, certified public accountants, enrolled agents, and enrolled actuaries who are eligible to practice before the Internal Revenue Service. See Department of the Treasury Circular 230, 31 CFR part 10. Tax return information may also be disclosed to persons who provide administrative or support services to an individual who is conducting a quality or peer review under this paragraph (p), but only to the extent necessary for the reviewer to conduct the review. Tax return information gathered in conducting a review may be used only for purposes of a review. No tax return information identifying a taxpayer may be disclosed in any evaluative reports or recommendations that may be accessible to any person other than the reviewer or the tax return preparer being reviewed. The tax

return preparer being reviewed will maintain a record of the review including the information reviewed and the identity of the persons conducting the review. After completion of the review, no documents containing information that may identify any taxpayer by name or identification number may be retained by a reviewer or by the reviewer's administrative or support personnel.

(2) The provisions of section 7216(a) and §301.7216-1 shall not apply to any disclosure necessary to accomplish a conflict review. A conflict review is a review undertaken to comply with requirements established by any federal, state, or local law, agency, board or commission, or by a professional association ethics committee or board, to either identify, evaluate, and monitor actual or potential legal and ethical conflicts of interest that may arise when a tax return preparer is employed or acquired by another tax return preparer, or to identify, evaluate, and monitor actual or potential legal and ethical conflicts of interest that may arise when a tax return preparer is considering engaging a new client. Tax return information gathered in conducting a conflict review may be used only for purposes of a conflict review. No tax return information identifying a taxpayer may be disclosed in any evaluative reports or recommendations that may be accessible to any person other than those responsible for identifying, evaluating, and monitoring legal and ethical conflicts of interest. No tax return information identifying a taxpayer may be disclosed outside of the United States or a territory or possession of the United States unless the disclosing and receiving tax return preparers have procedures in place that are consistent with good business practices and designed to maintain the confidentiality of the disclosed return information.

(3) Any person (including administrative and support personnel) receiving tax return information in connection with a quality, peer, or conflict review is a tax return preparer for purposes of sections 7216(a) and 6713(a). Tax return information disclosed and used for purposes of a quality, peer, or conflict review shall not be used or disclosed for any other purpose.

(q) through (r) [Reserved]. For further guidance, see §301.7216-2(q) through (r).

(s) Effective/applicability date. This section applies to disclosures or uses of tax return information occurring on or after **[INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**.

(t) Expiration date. The applicability of this section expires on or before **December 28, 2012**.

Steven T. Miller  
Deputy Commissioner for Services and Enforcement.

Approved: December 24, 2009

Michael Mundaca  
Acting Assistant Secretary of the Treasury (Tax Policy).

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