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# Section 7216 Tax Return Protections: Newest IRS Regs and Guidance Complying With TD 9478 and New Revenue Rulings in Cross-Selling Services

**A Live 110-Minute Teleconference/Webinar with Interactive Q&A**

**Today's panel features:**

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**Internal Revenue Service**, Washington, D.C.

Gerard Schreiber Jr., Partner, **Schreiber & Schreiber CPAs**, Metairie, La.

Phillip Pillar, Shareholder, **Greenberg Traurig**, Philadelphia

**Wednesday, March 3, 2010**

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**12 pm Central**

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## Section 7216 Tax Return Protections: Newest IRS Regs and Guidance Webinar

March 3, 2010

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# About Your Speakers

- *Jim Kurdziel, senior program analyst and technical advisor, electronic tax administration, IRS* [Jim.F.Kurdziel@irs.gov](mailto:Jim.F.Kurdziel@irs.gov), (202) 283-0908
  - Jim has 35 years of experience at the IRS as an auditor, manager and in other roles. Over the last 15 years, he has worked in electronic tax administration on strategic, policy, product and service initiatives.
  
- *Gerard Schreiber Jr., partner, Schreiber & Schreiber CPAs* [ghschreiber@bellsouth.net](mailto:ghschreiber@bellsouth.net), (504) 832-1819
  - Jerry focuses his tax and accounting work on smaller business and individual clients. He is a frequent writer and speaker on topics including Sect. 7216, and he also is a member of the AICPA IRS Practices and Procedures Committee.
  
- *Phillip Pillar, shareholder, Greenberg Traurig, LLP* [pillarp@gtlaw.com](mailto:pillarp@gtlaw.com)  
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  - Phil represents clients on international, federal and state tax matters before tax authorities and courts, and also handles matters including voluntary disclosures, accounting methods and tax shelters for corporate clients.

# Today's Agenda

- I. Introduction
- II. Background, slides 4 through 8
- III. Effects On Your Business Of Restrictions Under IRC Sect. 7216, slides 9 through 17
- IV. New Regulations And Guidance, slides 18 through 27
- V. Concluding Remarks

## Background: History Of §7216

- Statute enacted in 1971
- Regulations first issued in 1974
- Major revisions to regulations
  - Issued January and July 2008\*
  - Effective Jan. 1, 2009
  - First major revisions since 1974

\* T.D. 9375 and T.D. 9409

# The Statute

- **Applies *only* to preparers of income tax returns**
  - Professional preparers
  - Commercial preparers
  - Casual preparers (if compensated)
  - Volunteer preparers (including VITA and TCE)

## The Statute (Cont.)

- **Generally prohibits preparers from:**
  - Disclosing tax return information, and
  - Using tax return information
- **Exception: Preparers may disclose or use tax return information to prepare or assist in preparing tax returns**

## The Statute (Cont.)

- **Permits disclosures or uses:**
  - When provided in the Code
  - Pursuant to an order of a court
  - To prepare state and local tax returns
  - To prepare estimated tax forms
  - When provided in Treasury regulations

## The Statute (Cont.)

- Makes *knowing* or *reckless* disclosure or use a federal crime
  
- Preparers convicted of this misdemeanor:
  - May be fined not more than \$1,000 per offense
  - May be imprisoned not more than one year
  - May be fined and imprisoned
  - Must pay the cost of prosecution

# The Regulations

- §301.7216-1 Defines *tax return preparer, tax return information, disclosure and use*
- §301.7216-2 Disclosures or uses permitted *without* taxpayer's consent
- §301.7216-3 Disclosures or uses permitted *only with* taxpayer's consent

# “Tax Return Preparer”

Broadly defined to include anyone who prepares or assists in preparing returns in any capacity *or* has access to tax return information, e.g.

- Employees
- Contractors
- Computer repair technicians
- Consultants
- E-file providers

# “Tax Return Information”

- **Broadly defined to include:**
  - All information gathered to prepare return
  - All products created to support preparation
  - The return itself
  - e-file acknowledgement information
  - Software registration information

## “Disclosure” And “Use”

- *Disclosure* means making tax return information known to another person
- *Use* means referring to or relying on tax return information as the basis to take or permit an action

## Disclosures Or Uses *Without* Taxpayer Consent

- To prepare and quality review returns
- To comply with court, audit or statutory authorities
- To facilitate government tax administration
- To maintain *preparer* customer base

## Disclosures Or Uses *With* Taxpayer Consent

- For purposes *unrelated to return preparation*, e.g.
  - To analyze tax return information
  - To prepare solicitations
  - To market products or services
  - To make referrals to third parties
  
- And *related to return preparation*
  - To obtain substantive determination from another preparer

## Major Change: Disclosures Overseas

- No consents may be obtained to disclose SSNs to *preparers outside the U.S.*, its territories or possessions, unless:
  - SSNs are masked or redacted, *or*
  - Both sending and receiving preparers have “adequate data protection safeguards”

# Major Change: Manner And Form Of Consent

- Revenue Procedure 2008-35
- Separate forms for disclosure and use
- Mandatory language prescribed
- Electronic forms and signatures
- Form presentation requirements

# Major Change: Business Models

- To reflect and address modern tax preparation business models, e.g.
  - Electronic filers
  - Integrated financial services
  - Global firms and offshore customer service

# New Temporary And Proposed Regulations Under IRC §7216

- Preamble to proposed regulations: Reasons for guidance
  - Comments made to 2008 final regs
  - Specific issues, largely related to “-2 regs”
  - “Newsletter” issues
  - Marketing issues
  - Auxiliary service provider issues

# New Temporary And Proposed Regulations Under IRC §7216 (Cont.)

- Preamble to proposed regulations: Reasons for guidance
  - Statistical compilations
  - Notice 2009-13
  - Notice expired Dec. 31, 2009
  - Permissible uses and disclosures without consent
  - Auxiliary service providers

# Proposed Regs. Sections 301.7216-1(b)(3)(i)(B) And -301.7216-2(o)

- Statistical compilations
  - Anonymous
  - For marketing, and
  - Assisting taxpayers in choosing a return preparer
  - Volunteers

# Proposed Regs. Sections 301.7216-1(b)(3)(i)(B) And -301.7216-2(o), Cont.

- Concerns and restrictions
  - Maximize refunds at expense of accuracy
  - No dollar amounts in advertising: Adds “aggregated” to list
  - Anonymity: Cells from minimum of 10 taxpayers
  - Uses by 501(c)(3) preparer

## Proposed Regs. §301.7216-2(n)

- List of “TRI” for contacting tax return preparation clients (without consent) for marketing
- Adds:
  - Type of entity or individual
  - Return form
- Enough for now, but IRS may identify more later
- Due diligence added to disclosure for sale of business
- Marketing

## Proposed Regs. §301.7216-2(p)

- Legally or professionally required uses or disclosures
- Adds: Conflict of interest review
- Limits:
  - To extent necessary
  - To persons necessary

## Revenue Ruling 2010-4, 2010-4 IRB 1

- Covers marketing and educating-client issues
- Three examples
- Example 1: Return preparer advising re: law changes affecting prior returns (e.g., amend or carryback claim)
- Example 2: Attorney/accountant expecting to furnish future services notifying re: prospective effects of law changes

## Revenue Ruling 2010-4, 2010-4 IRB 1 (Cont.)


- Example 3: The “newsletter” example
  - Third-party service provider
  - Auxiliary service provider
- Accountants and attorneys vs. return preparers
- Effect of regulating preparers?
- Do all auxiliary service providers understand?

# Revenue Ruling 2010-5, 2010-5 IRB 1

- Auxiliary service providers
  - Providers: Who are they?
  - Auxiliary services: What are they?
  
- Professional liability insurance
  - An auxiliary service
  - Three examples

## Revenue Ruling 2010-5, 2010-5 IRB 1 (Cont.)

- Example 1: Obtaining coverage
- Example 2: Claims
- Example 3: Defense (attorney)
- Who else may be “auxiliary service provider?”
- What else may be “auxiliary services?”



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