

Disclosure Penalty Guidance

Cross References

- Rev. Rul. 2010-04
- Rev. Rul. 2010-05

UPDATE OVERVIEW

Under IRC §6713 and 7216, *Income Tax Return Preparer Penalties* may apply if the tax return preparer discloses or uses information on a client's tax return without the taxpayer's consent. The IRS recently provided guidance and examples of certain circumstances where the tax return preparer does not need written consent from a client prior to using confidential client information.

Example #1

Congress passed new legislation in 2009 authorizing net operating losses for 2008 to be carried back up to five years. Alan is an income tax return preparer who reviews previously filed returns to see if the new legislation affects any of his current or prior year clients, and whether or not they may be able to benefit from the expanded carryback rules. Alan contacts the affected clients and informs them of the change, advises them whether an amended return can be filed, and offers his return preparation services with regard to preparing and filing the amended returns. Alan does not need prior written consent to contact his clients under these circumstances. Alan is not in violation of Section 7216.

Example #2

Chris is an income tax return preparer who subscribes to a monthly newsletter published by XYZ Publishing, a company located within the United States. The newsletter contains educational tax information, tax tips, tax law updates, and direct solicitation for Chris's tax return preparation business. Chris discloses to XYZ Publishing the names and mailing addresses of each tax client. XYZ Publishing customizes each newsletter by printing the name and address of the client on the newsletter. XYZ Publishing then ships the newsletters to Chris. Chris then mails a newsletter to each of his clients. Chris has procedures in place that are consistent with good business practices and designed to maintain the confidentiality of his clients. XYZ Publishing also has confidentiality procedures in place and does not use the disclosed information for purposes other than those related to the services provided by Chris. Chris does not need prior written consent to provide his clients with this service. Chris is not in violation of Section 6713 or 7216.

Example #3

Alex is an income tax return preparer. He discloses to an insurance agent tax return information required to obtain and maintain professional liability insurance coverage. The disclosed information includes a list of client names and descriptions of the services that Alex provides to those clients. Alex also discloses to the insurance company tax return information required by the terms of the insurance policy to promptly and accurately report and to aid in the investigation of claims or potential claims against Alex by his clients. Alex also discloses to the insurance company tax return information required by the terms of the insurance policy to obtain legal representation provided by the insurance carrier under the terms of the insurance policy related to a claim or potential claim of professional negligence, misconduct, or fraud, or to an unrelated attorney for the purpose of evaluating a claim or potential claim of professional negligence, misconduct, or fraud. The insurance company is located within the United States. Alex is not in violation of Section 6713 or 7216 by disclosing tax return information under the above circumstances.

For additional examples, see Rev. Rul. 2010-04 and Rev. Rul. 2010-05.