

FAQs about Impact of Regulations under IRC Section 7216

Q. I've heard there are newly effective IRS regulations that could affect my firm's newsletter mailings. What's the story?

A. Very generally, regulations issued under IRC Section 7216, which went into effect January 1, 2009, place new restrictions on using and disclosing tax-return information, including information such as clients' names and addresses. Before using or disclosing tax-return information for purposes outside of tax-return preparation, an accounting firm or other tax preparer generally needs to obtain consent from the client. Violations could result in significant penalties. However, some exceptions to the rules apply.

Q. Does that mean I cannot mail out a newsletter or other communication to my tax-return clients?

A. No. Under the Section 7216 regulations, a tax preparer is permitted to use tax-return information to keep tax-return clients informed about tax developments, strategies, etc., and to solicit future tax-preparation business without getting consent for that use. So sending clients a communication such as Newkirk's *Tax Report* newsletter or a tax law summary brochure without obtaining consent is allowable under the regulations.

Q. What about a communication that isn't completely about tax? Suppose a newsletter covers tax items but some other accounting and planning issues as well?

A. The regulations are not completely clear on the issue of whether sending a newsletter or other communication containing tax information AND non-tax information requires consent to use. The regs state: "[A tax-return client list] may be used . . . solely to contact the taxpayers on the list for the purpose of offering tax information or additional tax return preparation services to such taxpayers." Does this mean that the information must contain *only* tax information? What if the communication contains *mostly* tax information? *Some* tax information?

Q. What if I want Newkirk to mail a newsletter on our firm's behalf?

A. If an accounting firm (or other tax preparer) wants Newkirk to mail the materials on the firm's behalf, an argument could be made that we are simply acting as an administrative agent of the firm and that consent is not required if the firm itself would not require consent to send out the materials. Some of our competitors are taking that position with their customers. However, a strict interpretation of the rules would require that consent to disclose be obtained if a third party is to do the mailing. Of course, the rule only applies to client information obtained in connection with the preparation of a tax return. If a firm would have *independently* obtained a client's name and address information through a means other than providing tax-preparation services (say, because the client is also an auditing client), then the new rules shouldn't apply to that client.

Q. What if I don't know whether the older names and addresses on my mailing list came from performing tax preparation services or other non-tax services or from other sources?

A. Some commentators say that it will be hard for firms to track just where a long-tenured client's name and address information came from and, thus, if there is the likelihood the information came from the non-tax-preparation service, firms should be able to use and disclose that information without gaining consent.

Q. What other parts of the regulations might affect my firm?

A. There are a number of onerous provisions in these regulations that don't apply directly to Newkirk's services but could affect a firm's ability to use tax-return information for offering other, non-tax preparation services. For instance, the regulations provide that a preparer may not request consent to use or disclose tax return information for purposes of soliciting business unrelated to tax-return preparation anytime after the tax return has been presented to the client for signature. And no additional requests for consent for use or disclosure for purposes of soliciting non-tax-return business may be made after an unsuccessful request for the same use has been made. This includes cases in which the client simply does not return the consent form. In other words, the client needn't affirmatively deny the request; inaction is enough to prevent any further requests for consent. ***The bottom line for most firms is that they will have to obtain consent to use and, if applicable, disclose tax-return information if they wish to use their tax-return clients' names and addresses for any purpose unrelated to tax services.***

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