

9, the language “H contributes \$500 to the HSA of each of” is corrected to read “H contributes \$500 to the HSA of each”.

3. On page 50241, column 2, § 54.4980G-4, A-2, line 3 from the bottom of the paragraph, the language “back-basis as described in Q & A-3 in” is corrected to read “back basis as described in Q & A-3 in”.

4. On page 50242, column 1, § 54.4980G-4, A-3(c), *Example 1*, paragraph (i)(D), line 3, the language “individual and employed by Employer from” is corrected to read “individual and employed by Employer J from”.

5. On page 50242, column 1, § 54.4980G-4, A-3(c), *Example 2*, line 3, the language “contributes on a monthly pay-as-you-go-basis” is corrected to read “contributes on a monthly pay-as-you-go basis”.

6. On page 50242, column 1, § 54.4980G-4, A-3(e), the *Example*, line 3, the language “contributes on a look-back-basis to the HSAs” is corrected to read “contributes on a look-back basis to the HSAs”.

7. On page 50242, column 2, § 54.4980G-4, A-4(a), line 15 from the bottom of the paragraph, the language “also contribute on a pre-funded-basis to” is corrected to read “also contribute on a pre-funded basis”.

8. On page 50243, column 1, § 54.4980G-4, A-7(a), line 3, the language “determined by rounding to nearest” is corrected to read “determined by rounding to the nearest”.

Cynthia Grigsby,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG-137243-02]

RIN-1545-BA96

Guidance Necessary To Facilitate Electronic Tax Administration—Updating of Section 7216 Regulations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations to update the rules regarding the disclosure and use of tax

return information by tax return preparers. The proposed regulations announce new and additional rules for taxpayers to consent electronically to the disclosure or use of their tax return information by tax return preparers. The proposed rules provide guidelines for tax return preparers using or disclosing information obtained in the process of preparing income tax returns.

DATES: Written or electronically generated comments must be received by March 8, 2006. Outlines of topics to be discussed at the public hearing scheduled for April 4, 2006, in the Auditorium of the Internal Revenue Building at 1111 Constitution Avenue, NW., Washington, DC 20224, must be received by March 14, 2006.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-137243-02), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-137243-02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the IRS Internet site at <http://www.irs.gov/regs> or via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS-REG-137243-02). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Dillon Taylor, at (202) 622-4940; concerning submissions of comments, LaNita Van Dyke of the Publications and Regulations Branch at (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Regulations on Procedure and Administration (26 CFR Part 301) under section 7216 of the Internal Revenue Code (Code). Section 7216 imposes criminal penalties on tax return preparers who make unauthorized disclosures or uses of information furnished to them in connection with the preparation of an income tax return. In addition, tax return preparers are subject to civil penalties under section 6713 for disclosure or use of this information unless an exception under the rules of section 7216(b) applies to the disclosure or use.

Section 7216 was enacted by section 316 of the Revenue Act of 1971, Public Law 92-178 (85 Stat. 529, 1971). In

1988, Congress modified the section by limiting the criminal sanction to knowing or reckless unauthorized disclosures. Public Law 100-647, (102 Stat. 3749, 1988). At the same time, Congress enacted the civil penalty that is now found in section 6713. Public Law 100-647, section 6242(a) (102 Stat. 3759, 1988). In 1989, Congress further modified section 7216, directing the Treasury Department to issue regulations permitting disclosures of tax return information for quality or peer reviews. Public Law 101-239, 7739(a) (102 Stat. 3759, 1989).

The Treasury Department and the IRS proposed regulations under section 7216 on December 20, 1972 (37 FR 28070). Final regulations were issued on March 29, 1974 (39 FR 11537). These regulations are divided into three parts: Section 301.7216-1 for general provisions and definitions; Section 301.7216-2 for disclosures and uses that do not require formal taxpayer consent; and section 301.7216-3 for disclosures and uses that require formal taxpayer consent. Since the regulations were adopted in 1974, the Treasury Department and the IRS have amended § 301.7216-2 on occasion, but §§ 301.7216-1 and 301.7216-3 have remained unchanged.

The current regulations were written in a paper filing era. They do not address current common industry practices, such as electronic preparation or filing of tax returns. The regulations are silent on taxpayers' consent to the disclosure or use of tax return information in an electronic environment. The proposed regulations address these issues.

The proposed regulations also contain other modifications to reflect the principle that taxpayers may provide knowing, informed, and voluntary consent to a tax return preparer's use of tax return information for purposes other than tax return preparation. While the ability of a tax return preparer to solicit consent from a taxpayer remains limited under certain circumstances, such as when the taxpayer has already rejected a substantially similar request for consent, these regulations allow a tax return preparer to solicit a taxpayer's consent to use tax return information under certain circumstances that the existing regulations currently prohibit. For example, these proposed regulations allow tax return preparers to obtain consents to use tax return information for solicitation of services or facilities furnished by any person rather than limiting solicitations to the services or facilities offered by the tax return preparer or member of the tax return preparer's "affiliated group."

Concurrently, with publication of these proposed regulations, the IRS is publishing a notice containing a proposed revenue procedure that would provide guidance to tax return preparers on the format and content of consents to disclose and consents to use tax return information under § 301.7216–3. The proposed revenue procedure would also provide specific guidance for electronic signatures when a taxpayer executes an electronic consent to the disclosure or use of the taxpayer's tax return information.

Explanation of Provisions

1. Section 301.7216–1 Penalty for Disclosure or Use of Tax Return Information

The regulations revise and clarify several definitions and clarify the scope of the rules. For example, section 7216, rather than section 7701(a)(36) (defining income tax return preparer) or the privacy provisions of Title V of the Gramm-Leach-Bliley Act, Public Law 106–102, (113 Stat. 1338, GLBA), governs the disclosure and use of tax return information by tax return preparers. The GLBA governs the use and disclosure of customer information by financial institutions. Any requirements of the GLBA that may be applicable to tax return preparers do not supersede, alter, or affect the requirements of section 7216 and §§ 301.7216–1 through 301.7216–3. Similarly, the requirements of section 7216 and §§ 301.7216–1 through 301.7216–3 do not nullify any requirements or restrictions of the GLBA, which are in addition to the requirements or restrictions of section 7216 and §§ 301.7216–1 through 301.7216–3.

A. Tax Return Preparer

The definition of *tax return preparer* is revised to distinguish it from the definition of income tax return preparer in section 7701(a)(36); tax return preparers subject to section 7216 include a broader group of persons than income tax return preparers defined in section 7701(a)(36). Some persons who are excluded from the definition of an income tax return preparer under section 7701(a)(36), for example, persons providing secretarial services, are tax return preparers under section 7216, as defined by § 301.7216–1(b)(2). Some of the examples and exclusions have been revised to address common scenarios.

B. Tax Return Information

The revised definition of *tax return information* clarifies that the term

encompasses a broader range of information than what taxpayers literally furnish to a tax return preparer. The taxpayer's entitlement to a refund and the amount of the refund are both tax return information. Similarly, information the IRS furnishes a tax return preparer with respect to the processing of a return, including the acknowledgment of acceptance of an electronically-filed return, is tax return information, even though the taxpayer does not communicate that information to the tax return preparer.

C. Use and Disclosure

The proposed regulations add a definition of the term “use” to clarify application of that term in the context of electronic preparation and filing. The proposed regulations add a definition of “disclosure” to clarify that the term should be broadly construed. The proposed regulations provide that to the extent that a taxpayer's use of a hyperlink results in the transmission of tax return information, that transmission of tax return information is a disclosure.

2. Section 301.7216–2 Permissible Disclosures or Uses Without Consent of the Taxpayer

Proposed § 301.7216–2 provides exceptions to the general rule of section 7216(a) that imposes criminal penalties on tax return preparers who make unauthorized disclosures or uses of tax return information. A tax return preparer may disclose or use tax return information as § 301.7216–2 permits without obtaining consent from a taxpayer. A number of subsections dealing with disclosures or uses without consent are proposed in substantially their current form. Some subsections are renumbered to achieve a more logical ordering, and some subsections have been proposed with minor changes to the current language to refine the rules or promote clarity. Some subsections addressing disclosures between tax return preparers have been changed to reflect new rules.

A. Proposed Changes to Specifically Account for Technological, Legal, and Other Developments

(1) Proposed § 301.7216–2(b) provides that disclosures to the IRS that will facilitate electronic tax administration are authorized without the taxpayer's prior written consent. Disclosures that will facilitate electronic tax administration include IRS requests for tax return information to investigate compliance with electronic filing rules or to evaluate the effectiveness of electronic filing programs.

(2) Proposed § 301.7216–2(d) expands current § 301.7216–2(h), which authorizes disclosures to tax return preparers who process tax return information. The proposed regulations provide that disclosures between tax return preparers are authorized when the disclosures (i) assist in the preparation of a return, (ii) as long as the services provided by the recipient of the disclosure are not substantive determinations or advice affecting a taxpayer's reported tax liability; and (iii) as long as the disclosure is to a tax return preparer located in the United States. The proposed regulations clarify that disclosures to other tax return preparers for substantive determinations or advice require the taxpayer's prior written consent. The proposed regulations also provide that tax return preparers' disclosures to other tax return preparers located outside of the United States require the taxpayer's prior written consent. The written consent for disclosure of tax return information outside of the United States is needed because it is difficult for the Secretary to pursue a criminal action under section 7216 against a tax return preparer located outside of the United States or to collect a civil penalty assessed under section 6713 from a tax return preparer located outside the United States. Proposed § 301.7216–2(d) also provides that a tax return preparer may disclose tax return information to contractors performing certain auxiliary services in connection with tax return preparation. For the disclosure to fall within this exception, the tax return preparer must present the individuals receiving the disclosure with a written notice informing them that section 7216 applies to them and describes the requirements and penalties of section 7216. Contractors to whom disclosures are made pursuant to this provision are tax return preparers pursuant to § 301.7216–1(b)(2)(i)(D).

(3) Proposed § 301.7216–2(f) amends current § 301.7216–2(c), regarding disclosures pursuant to an order of a court or an administrative order, demand, summons or subpoena issued by a Federal or State agency, by also authorizing disclosures made pursuant to a subpoena issued by the United States Congress. In addition, the IRS is aware that most state accountancy boards work in conjunction with the American Institute of Certified Public Accountants' (AICPA) Professional Ethics Executive Committee, and state and local bar associations to investigate potential ethical violations by certified public accountants who are members of the AICPA. The proposed amendment

authorizes disclosures to the AICPA made pursuant to an ethics violation investigation of the tax return preparer. The proposed amendment authorizes disclosures made pursuant to a formal demand from the Public Company Accounting Oversight Board.

(4) Proposed § 301.7216–2(g), governing disclosures for use in Treasury investigations or court proceedings, amends current § 301.7216–2(d), which limits disclosures to IRS investigations and court proceedings. This change is necessary because a function within the Treasury Department, but outside of the IRS, may handle some investigations that will require a disclosure of tax return information. Disclosures are also authorized to officers of a court in court proceedings in which a taxpayer-client of a return preparer is a party. The proposed regulations clarify that the tax return preparer need not be a party to a court proceeding for a disclosure to be authorized under this section.

(5) Proposed § 301.7216–2(k) expands the current provision in § 301.7216–2(k) governing the preparation or audit of State or local tax returns to allow the use of tax return information to assist in the preparation of any tax return of the taxpayer under the law of a country other than the United States. Disclosures are also expanded to allow for the preparation of tax returns under the law of another country to the same extent that disclosures are allowed for the preparation and filing of a Federal tax return.

(6) Proposed § 301.7216–2(o) addresses the use of tax return information to prepare statistical compilations and the use of the statistical compilations themselves. Rev. Rul. 79–114 (1979–1 C.B. 441), holds that the current regulations prohibit a tax return preparer's use of tax return information to prepare anonymous statistical compilations unless the affected taxpayers individually consent. Section 301.7216–2(o) will obsolete Rev. Rul. 79–114. Section 301.7216–2(o) will permit the use of tax return information to prepare anonymous statistical compilations for limited purposes related to management or support of the tax return preparer's business. The tax return information will remain protected from any other use and disclosure outside the limited purposes of this proposed section.

B. Other Changes to Existing Provisions

(1) Proposed § 301.7216–2(h) amends current § 301.7216–2(e), which authorizes attorneys and accountants to disclose tax return information to third parties in the normal course of

rendering legal or accounting services if the taxpayer expressly or impliedly consents to the disclosure. The proposed regulations remove the requirement that the taxpayer's express or implied consent is necessary before these types of disclosures can be made because implied consent would exist in virtually every situation when an attorney or accountant is required to disclose tax return information to a third party in the normal course of providing legal or accounting services to a taxpayer. The proposed regulations provide that these disclosures are authorized unless the taxpayer directs otherwise.

(2) Proposed § 301.7216–2(i) amends current § 301.7216–2(f), which provides that corporate fiduciaries are authorized to disclose tax return information to a taxpayer's attorney, accountant, or investment advisor only with the taxpayer's express or implied consent. As with disclosures made by attorneys and accountants, a taxpayer will generally give implied consent to disclosures by corporate fiduciaries to a taxpayer's attorney, accountant, or investment advisor. The proposed regulations remove the express or implied consent requirement, and provide instead that disclosures are authorized unless the taxpayer directs otherwise.

(3) Proposed § 301.7216–2(c) amends current § 301.7216–2(i), regarding disclosures by an officer, employee, or member of a tax return preparer to another officer, employee, or member of the same tax return preparer to perform services that assist in the preparation of, or assist in providing auxiliary services in connection with the preparation of, the tax return of a taxpayer. The proposed regulations provide that these disclosures or uses are authorized without the taxpayer's written consent only if the officer, employee, or member to whom the information is disclosed is located within the United States. The written consent for disclosure of tax return information outside of the United States is needed because it is difficult for the Secretary to pursue a criminal action under section 7216 against a tax return preparer located outside of the United States or to collect a civil penalty assessed under section 6713 from a tax return preparer located outside the United States. Therefore, a taxpayer's written consent is required before a tax return preparer can disclose a taxpayer's tax return information to another tax return preparer located outside of the United States.

(4) Proposed § 301.7216–2(q) amends current § 301.7216–2(n), regarding disclosures to report the commission of

a crime, by clarifying that penalties for disclosure shall not apply to disclosures necessary to report a crime, nor to any disclosures necessary for the investigation and prosecution of the crime.

3. Proposed § 301.7216–3: Disclosures and Uses Authorized by Taxpayer Consent

Significant revisions are proposed under § 301.7216–3 to address a number of issues concerning the application of these rules in the context of electronic return preparation and filing. The Treasury Department and the IRS propose these amendments to protect taxpayers' tax return information, and to ensure that taxpayers are fully informed when providing consent to disclose or use tax return information.

A. Restrictions Regarding the Offering of Certain Services

The current regulations restrict use of tax return information for the solicitation of services or facilities in matters not related to the IRS to those "currently offered" by the tax return preparer or members of the tax return preparer's "affiliated group," within the meaning of section 1504. Because taxpayers must consent to any use or disclosure connected with the solicitation, taxpayer privacy interests are adequately protected regardless of whether a service is currently offered or whether a business offering a service to the taxpayer is a member of a tax return preparer's affiliated group. The currently-offered and affiliated-group rules restrict the ability of taxpayers to control and direct the use of their own tax return information as they see fit. The proposed regulations adopt an approach that ensures taxpayers are provided with a meaningful opportunity to consent to the use and disclosure of their tax return information. Accordingly, the proposed rules revoke the affiliated-group and currently-offered restrictions.

The current regulations do not place limits on tax return preparers' ability to obtain consents to use tax return information to solicit business in matters related to the IRS. The proposed regulations remove the distinction between matters related to the IRS and matters not related to the IRS, and thereby make uniform the requirements regarding consents to use tax return information to solicit business.

B. Form of Consent

The proposed regulations provide that the IRS may provide guidance, by revenue procedure, on the form and content of a taxpayer's consent. The

proposed regulations also allow a taxpayer to use a single document to consent to multiple uses of their tax return information, or use a single document to consent to multiple disclosures of their tax return information, provided certain requirements are met. Although the proposed regulations permit a single document to authorize multiple uses or multiple disclosures, the taxpayer must affirm separately each use or disclosure within the single document. In addition, because the Treasury Department and the IRS believe taxpayers should be alerted to the significant difference between consenting to disclosures to third parties and consenting to uses of tax return information by their tax return preparers, the proposed regulations provide that a single document cannot authorize both uses and disclosures; rather, one document must authorize uses and another separate document must authorize disclosures.

Proposed Effective Date

These regulations are proposed to apply on the date that is 30 days after the final regulations are published in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking 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, and, because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f), this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact.

Comments and Public Hearing

Before these regulations are adopted as final regulations, consideration will be given to any written comments and electronic comments that are submitted timely to the IRS. The Treasury Department and the IRS specifically request comments on the following: Whether it is necessary to have an exception to section 7216 for disclosures made to contractors as provided in proposed § 301.7216-2(d)(2), and, if so, how should the regulations protect the information from being used or disclosed by the contractors; and what should constitute

an electronic signature on electronic consents. In addition, the IRS and Treasury Department specifically request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying.

The public hearing is scheduled for April 4, 2006, at 10 a.m., and will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. All visitors must present photo identification to enter the building. Visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments by March 8, 2006, and submit an outline of the topics to be discussed and the time to be devoted to each topic by March 14, 2006. A period of 10 minutes will be allocated to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of the regulations are Brinton T. Warren, Bridget E. Tombul, and Dillon Taylor of the Office of the Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division.

List of Subjects in 26 CFR Part 301

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

Proposed Amendment to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

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

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

Par. 2. Section 301.7216-0 is added to read as follows:

§ 301.7216-0 Table of contents.

This section lists captions contained in §§ 301.7216-1 through 301.7216-3.

§ 301.7216-1 Penalty for disclosure or use of tax return information.

- (a) In general.
- (b) Definitions.
- (c) Gramm-Leach-Bliley Act.
- (d) Effective date.

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

- (a) Disclosure pursuant to other provisions of Internal Revenue Code.
- (b) Disclosure to facilitate electronic tax administration.
- (c) Disclosures or uses for preparation of a taxpayer's return.
- (d) Disclosures to other tax return preparers.
- (e) Disclosure or use of information in the case of related taxpayers.
- (f) Disclosure pursuant to an order of a court, or an administrative order, a demand, summons or subpoena which is issued in the performance of its duties by a Federal or State agency, the United States Congress, a professional ethics board, or the Public Company Accounting Oversight Board.
- (g) Disclosure for use in Treasury investigations or court proceedings.
- (h) Certain disclosures by attorneys and accountants.
- (i) Corporate fiduciaries.
- (j) Disclosure to taxpayer's fiduciary.
- (k) Disclosure or use of information in preparation or audit of State or local tax returns or assisting a taxpayer with foreign country tax obligations.

- (l) Payment of tax preparation services.
- (m) Retention of records.
- (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 or peer reviews.
- (q) Disclosure to report the commission of a crime.
- (r) Disclosure of tax return information due to a tax return preparer's incapacity or death.
- (s) Effective date.

§ 301.7216-3 Disclosure or use permitted only with the taxpayer's consent.

- (a) In general.
- (b) Timing requirements and limitations.
- (c) Special rules.
- (d) Permissible disclosures to third parties at the request of the taxpayer.
- (e) Effective date.

Par. 3. Section 301.7216–1 is revised to read as follows:

§ 301.7216–1 Penalty for disclosure or use of tax return information.

(a) *In general.* Section 7216(a) prescribes a criminal penalty for tax return preparers who knowingly or recklessly disclose or use tax return information for a purpose other than preparing a tax return. A violation of section 7216 is a misdemeanor, with a maximum penalty of up to one year imprisonment or a fine of not more than \$1,000, or both, together with the costs of prosecution. Section 7216(b) establishes exceptions to the general rule in section 7216(a) prohibiting disclosure and use. Section 7216(b) also authorizes the Secretary to promulgate regulations prescribing additional permitted disclosures and uses. Section 6713(a) prescribes a related civil penalty for disclosures and uses that constitute a violation of section 7216. The penalty for violating section 6713 is \$250 for each disclosure and use, not to exceed a total of \$10,000 for a calendar year. Section 6713(b) provides that the exceptions in section 7216(b) also apply to section 6713. Under section 7216(b), the provisions of section 7216(a) will not apply to any disclosure or use permitted under regulations prescribed by the Secretary.

(b) *Definitions.* For purposes of section 7216 and §§ 301.7216–1 through 301.7216–3:

(1) *Tax return.* The term *tax return* means any return (or amended return) of income tax imposed by chapter 1 of the Internal Revenue Code.

(2) *Tax return preparer*—(i) *In general.* The term *tax return preparer* means:

(A) Any person who is engaged in the business of preparing or assisting in preparing tax returns;

(B) Any person who is engaged in the business of providing auxiliary services in connection with the preparation of tax returns, including a person who develops software that is used to prepare or file a tax return and any Authorized IRS e-file Provider;

(C) Any person who is otherwise compensated for preparing, or assisting in preparing, a tax return for any other person; or

(D) Any individual who, as part of their duties of employment with any person described in paragraph (b)(2)(i)(A), (B), or (C) of this section performs services that assist in the preparation of, or assist in providing auxiliary services in connection with the preparation of, a tax return.

(ii) *Business of preparing returns.* A person is engaged in the business of

preparing tax returns as described in paragraph (b)(2)(i)(A) of this section if, in the course of the person's business, the person holds himself out to tax return preparers or taxpayers as a person who prepares tax returns or assists in preparing tax returns, whether or not tax return preparation is the person's sole business activity and whether or not the person charges a fee for tax return preparation services.

(iii) *Providing auxiliary services.* A person is engaged in the business of providing auxiliary services in connection with the preparation of tax returns as described in paragraph (b)(2)(i)(B) of this section if, in the course of the person's business, the person holds himself out to tax return preparers or to taxpayers as a person who performs auxiliary services, whether or not providing the auxiliary services is the person's sole business activity and whether or not the person charges a fee for the auxiliary services. Likewise, a person is engaged in the business of providing auxiliary services if, in the course of the person's business, the person receives a taxpayer's tax return information from another tax return preparer pursuant to the provisions of § 301.7216–2(d)(2).

(iv) *Otherwise compensated.* A tax return preparer described in paragraph (b)(2)(i)(C) of this section includes any person who—

(A) Is compensated for preparing a tax return for another person, but not in the course of a business; or

(B) Is compensated for helping, on a casual basis, a relative, friend, or other acquaintance to prepare their tax return.

(v) *Exclusions.* A person is not a tax return preparer merely because he leases office space to a tax return preparer, furnishes credit to a taxpayer whose tax return is prepared by a tax return preparer, furnishes information to a tax return preparer at the taxpayer's request, furnishes access (free or otherwise) to a separate person's tax return preparation Web site through a hyperlink on his own Web site, or otherwise performs some service that only incidentally relates to the preparation of tax returns.

(vi) *Application of section 7701(a)(36).* If a person is an income tax return preparer for purposes of section 7701(a)(36), the person is subject to the provisions of section 7216 and is a tax return preparer for purposes of §§ 301.7216–1 through 301.7216–3. The fact that a person is not an income tax return preparer for purposes of section 7701(a)(36), however, is not determinative of whether the person is a tax return preparer for purposes of

section 7216(a) and §§ 301.7216–1 through 301.7216–3.

(vii) *Examples.* The application of § 301.7216–1(b)(2) may be illustrated by the following examples:

Example 1. Bank B is a tax return preparer within the meaning of paragraph (b)(2)(i)(A) of this section, and an Authorized IRS e-file Provider. B employs one individual, Q, to solicit the necessary tax return information for the preparation of a tax return; another individual, R, to prepare the return on the basis of the information that is furnished; a secretary, S, who types the information on the returns into a computer; and an administrative assistant, T, who uses a computer to file electronic versions of the tax returns. Under these circumstances, only R is an income tax return preparer for purposes of section 7701(a)(36), but all four employees are tax return preparers for purposes of section 7216, as provided in paragraph (b) of this section.

Example 2. Tax return preparer P contracts with department store D to rent space in D's store. D advertises that taxpayers who use P's services may charge the cost of having their tax return prepared to their charge account with D. Under these circumstances, D is not a tax return preparer because it provides space, credit, and services only incidentally related to the preparation of tax returns.

(3) *Tax return information*—(i) *In general.* The term *tax return information* means any information, including, but not limited to, a taxpayer's name, address, or identifying number, which is furnished in any form or manner for, or in connection with, the preparation of a tax return of the taxpayer. This information includes information that the taxpayer furnishes to a tax return preparer and information furnished the tax return preparer by a third party. Tax return information also includes information the tax return preparer derives or generates from tax return information in connection with the preparation of a taxpayer's return.

(A) Tax return information can be provided directly by the taxpayer or by another person. Likewise, tax return information includes information received by the tax return preparer from the IRS in connection with the processing of such return, including an acknowledgment of acceptance or notice of rejection of an electronically filed return.

(B) Tax return information includes statistical compilations of tax return information, even in a form that cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer. See § 301.7216–2(o) for limited use of tax return information to make statistical compilations without taxpayer consent and to use the statistical compilations for limited purposes.

(C) Tax return information does not include information identical to any tax return information that has been furnished to a tax return preparer if the identical information was obtained otherwise than in connection with the preparation of a tax return. Information maintained in a form that is associated with the tax return preparation, however, becomes tax return information, regardless of how the information was initially obtained.

(D) Information is considered "in connection with tax return preparation," and therefore tax return information, if the taxpayer would not have furnished the information to the tax return preparer but for his intention to engage, or his engagement of, the tax return preparer to prepare his tax return.

(ii) *Examples.* The application of this paragraph (b)(3) may be illustrated by the following examples:

Example 1. Taxpayer A purchases computer software designed to assist with the preparation and filing of her income tax return. When A loads the software onto her computer, it prompts her to register her purchase of the software. As part of the registration process, the software provider states that it will provide registrants with any updates to the software. In this situation, the software provider is a tax return preparer under paragraph (b)(2)(i)(B) of this section and the information that A provides to register her purchase is tax return information because she is providing it in connection with the preparation of a tax return.

Example 2. Corporation A is a brokerage firm that maintains a website through which its clients may access their accounts, trade stocks, and generally conduct a variety of financial activities. Through its Web site, A offers its clients free access to its own tax preparation software. Taxpayer B is a client of A and has furnished A his name, address, and other information when registering for use of A's Web site to use A's brokerage services. In addition, A has a record of B's brokerage account activity, including sales of stock, dividends paid, and IRA contributions made. B uses A's tax preparation software to prepare his tax return. The software populates some fields on B's return on the basis of information A already maintains in its databases. A is a tax return preparer within the meaning of paragraph (b)(2)(i)(B) of this section because it has prepared and provided software for use in preparing tax returns. The information in A's databases that the software accesses to populate B's return, *i.e.*, the registration information and brokerage account activity, is not tax return information because A did not receive that information in connection with the preparation of a tax return. Once A uses the information to populate the return, however, the information associated with the return becomes tax return information. If A retains the information in a form in which A can identify that the information was used in connection with the preparation of a return,

the information in that form is tax return information. If, however, A retains the information in a database in which A cannot identify whether the information was used in connection with the preparation of a return, then that information is not tax return information.

(4) *Use—(i) In general.* Use of tax return information includes any circumstance in which a tax return preparer refers to, or relies upon, tax return information as the basis to take or permit an action.

(ii) *Example.* The application of this paragraph (b)(4) may be illustrated by the following example:

Example. Preparer G is a tax return preparer as defined by paragraph (b)(2)(i)(A) of this section. If G determines, upon preparing a return, that a refund is due to the taxpayer, G will ask whether the taxpayer desires a refund anticipation loan, *i.e.*, a loan that the taxpayer repays from the taxpayer's refund proceeds. G does not ask about refund anticipation loans in cases in which the taxpayer is not due a refund. G is using tax return information when it asks whether a taxpayer is interested in obtaining a refund anticipation loan because G is basing the inquiry on the taxpayer's being entitled to a refund.

(5) *Disclosure.* The term *disclosure* means the act of making tax return information known to any person in any manner whatever. To the extent that a taxpayer's use of a hyperlink results in the transmission of tax return information, such transmission of tax return information is a disclosure by the tax return preparer subject to penalty under section 7216 if not authorized by regulation.

(6) *Hyperlink.* For purposes of section 7216, a hyperlink is the device used to transfer an individual using tax preparation software from a tax return preparer's Web page to a Web page operated by another person without the individual having to separately enter the web address of the destination page.

(7) *Request for consent.* A request for consent includes any effort by a tax return preparer to obtain the taxpayer's consent to use or disclose the taxpayer's tax return information. The act of supplying a taxpayer with a paper or electronic form that meets the requirements of a revenue procedure published pursuant to § 301.7216-3(a) is a request for a consent. When a tax return preparer requests a taxpayer's consent, any associated efforts of the tax return preparer, including, but not limited to, verbal or written explanations of the form, are part of the request for consent.

(c) *Gramm-Leach-Bliley Act.* Any applicable requirements of the Gramm-Leach-Bliley Act, Public Law 106-102 (113 Stat. 1338), do not supersede, alter,

or affect the requirements of section 7216 and §§ 301.7216-1 through 301.7216-3. Similarly, the requirements of section 7216 and §§ 301.7216-1 through 301.7216-3 do not nullify any requirements or restrictions of the Gramm-Leach-Bliley Act, which are in addition to the requirements or restrictions of section 7216 and §§ 301.7216-1 through 301.7216-3.

(d) *Effective date.* This section applies on the date that is 30 days after the final regulations are published in the **Federal Register**.

Par. 4. Section 301.7216-2 is revised to read as follows:

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

(a) *Disclosure pursuant to other provisions of Internal Revenue Code.* The provisions of section 7216(a) and § 301.7216-1 shall not apply to any disclosure of tax return information if the disclosure is made pursuant to any other provision of the Internal Revenue Code or the regulations thereunder. Thus, for example, these provisions will not apply to—

(1) A disclosure under section 7269 to an officer or employee of the IRS of information concerning the estate of a decedent; or

(2) A disclosure under section 7602 (through formal or informal procedures) to an officer or employee of the IRS of books, papers, records, or other tax return information that may be relevant to any person's income tax liability.

(b) *Disclosures to facilitate electronic tax administration.* Tax return preparers may disclose to the IRS any tax return information the IRS requests to assist in the administration of electronic filing programs. The information can include tax return information requested in the course of investigating Authorized IRS e-file Providers for compliance with electronic filing rules or tax return information that the IRS determines would assist in evaluating the effectiveness of electronic filing programs.

(c) *Disclosures or uses for preparation of a taxpayer's return—(1) Tax return preparers located within the same firm in the United States.* If a taxpayer furnishes tax return information to a tax return preparer located within the United States, including any territory or possession of the United States, an officer, employee, or member of a tax return preparer may use the tax return information, or disclose the tax return information to another officer, employee, or member of the same tax return preparer, for the purpose of performing services that assist in the preparation of, or assist in providing

auxiliary services in connection with the preparation of, the taxpayer's tax return. If an officer, employee, or member to whom the tax return information is to be disclosed is located outside of the United States or any territory or possession of the United States, the taxpayer's consent under § 301.7216-3 prior to any disclosure is required.

(2) *Furnishing tax return information to tax return preparers located outside the United States.* If a taxpayer initially furnishes tax return information to a tax return preparer located outside of the United States or any territory or possession of the United States, an officer, employee, or member of a tax return preparer may use tax return information, or disclose any tax return information to another officer, employee, or member of the same tax return preparer, for the purpose of performing services that assist in the preparation of, or assist in providing auxiliary services in connection with the preparation of, the tax return of a taxpayer by or for whom the information was furnished without the taxpayer's consent under § 301.7216-3.

(3) *Examples.* The following examples illustrate this paragraph (c):

Example 1. T is a client of Firm, which is a tax return preparer. E, an employee at Firm's State A office, receives tax return information from T for use in preparing T's income tax return. E discloses the tax return information to P, an employee in Firm's State B office; P uses the tax return information to process T's income tax return. Firm is not required to receive T's consent under § 301.7216-3 prior to E's disclosure of T's tax return information to P, because the tax return information is disclosed to an employee employed by the same tax return preparer located within the United States.

Example 2. Same facts as Example 1 except T's tax return information is disclosed to FE who is located in Firm's Country F office. FE uses the tax return information to process T's income tax return. After processing, FE returns the processed tax return information to E in Firm's State A office. Because FE is outside of the United States, Firm is required to obtain T's consent under § 301.7216-3 prior to E's disclosure of T's tax return information to FE.

Example 3. T, Firm's client, is temporarily located in Country F. She initially furnishes her tax return information to employee FE in Firm's Country F office for the purpose of having Firm prepare her U.S. income tax return. FE makes the substantive determinations concerning T's tax liability and forwards T's tax return information to FP, an employee in Firm's Country P office, for the purpose of processing T's tax return information. FP processes the return information and forwards it to Partner at Firm's State A office in the United States for review and delivery to T. Because T initially furnished the tax return information to a tax

return preparer outside of the United States, T's prior consent for use or disclosure under § 301.7216-3 was not required. An officer, employee, or member of Firm in the United States may use T's tax return information or disclose the tax return information to another officer, employee, or member of Firm without T's prior consent under § 301.7216-3 as long as any use or disclosure of T's tax return information is within the United States. Firm is required to receive T's consent under § 301.7216-3 prior to any subsequent disclosure of T's tax return information to a tax return preparer located outside of the United States.

(d) *Disclosures to other tax return preparers—(1) Preparer-to-preparer disclosures.* Except as limited in paragraph (d)(2) of this section, an officer, employee, or member of a tax return preparer may disclose tax return information of a taxpayer to another tax return preparer located in the United States (including any territory or possession of the United States) for the purpose of preparing, or assisting in preparing a tax return, or obtaining or providing auxiliary services in connection with the preparation of any tax return so long as the services provided are not substantive determinations or advice affecting a taxpayer's reported tax liability. The authorized disclosures permitted under this subparagraph include one tax return preparer disclosing tax return information to another tax return preparer for the purpose of having the second tax return preparer transfer that information to, and compute the tax liability on, a tax return of the taxpayer by means of electronic, mechanical, or other form of tax return processing service. The authorized disclosures permitted under this subparagraph also include disclosures by a tax return preparer to an Authorized IRS e-file Provider for the purpose of electronically filing the return with the IRS. Authorized disclosures also include disclosures by a tax return preparer to a second tax return preparer for the purpose of making information concerning the return available to the taxpayer. This would include, for example, whether the return has been accepted or rejected by the IRS, or the status of the taxpayer's refund. Except as provided in paragraph (c) of this section, a tax return preparer may not disclose tax return information to another tax return preparer for the purpose of the second tax return preparer providing substantive determinations without first receiving the taxpayer's consent in accordance with the rules under § 301.7216-3.

(2) *Disclosures to contractors.* A tax return preparer may disclose tax return information to a person under contract

with the tax return preparer in connection with the programming, maintenance, repair, testing, or procurement of equipment or software used for purposes of tax return preparation only to the extent necessary for the person to provide the contracted services, and only if the tax return preparer ensures that all individuals who are to receive disclosures of tax return information receive a written notice that informs them of the applicability of sections 6713 and 7216 to them and describes the requirements and penalties of sections 6713 and 7216. Contractors receiving tax return information pursuant to this subsection are tax return preparers under section 7216 because they are performing auxiliary services in connection with tax return preparation. See § 301.7216-1(b)(2)(i)(B) and (D).

(3) *Examples.* The following examples illustrate this paragraph (d):

Example 1. E, an employee at Firm's State A office, receives tax return information from T for Firm's use in preparing T's income tax return. E makes substantive determinations and forwards the tax return information to P, an employee at Processor; Processor is located in State B. P places the tax return information on the income tax return and furnishes the finished product to E. E is not required to receive T's prior consent under § 301.7216-3 before disclosing T's tax return information to P, because Processor's services are not substantive determinations and the tax return information remained in the United States at Processor's State B office during the entire course of the tax return preparation process.

Example 2. Firm, a tax return preparer, offers income tax return preparation services. Firm's contract with its software provider, Contractor, requires Firm to periodically randomly select certain taxpayers' tax return information solely for the purpose of testing the reliability of the software sold to Firm. Under its agreement with Contractor, Firm discloses tax return information to Contractor's employee, C, who services Firm's contract without providing Contractor or C with a written notice that describes the requirements of and penalties under sections 7216 and 6713. C uses the tax return information solely for quality assurance purposes. Firm's disclosure of tax return information to C was an impermissible disclosure, because Firm failed to ensure that C received a written notice that describes the requirements and penalties of sections 7216 and 6713.

Example 3. E, an employee of Firm in State A in the United States, receives tax return information from T for use in preparing T's income tax return. After E enters T's tax return information into Firms' computer, that information is stored on a computer server that is physically located in State A. Firm contracts with Contractor, located in Country F, to prepare its clients' tax returns. FE, an employee of Contractor, uses a computer in Country F and inputs a password to view T's

income tax information stored on the computer server in State A to prepare T's tax return. A computer program permits FE to view T's tax return information, but prohibits FE from downloading or printing out T's tax return information from the computer server. Because Firm is disclosing T's tax return information outside of the United States, Firm is required to obtain T's consent under § 301.7216-3 prior to the disclosure to FE.

(e) *Disclosure or use of information in the case of related taxpayers.* (1) In preparing a tax return of a second taxpayer, a tax return preparer may use, and may disclose to the second taxpayer, in the form in which it appears on the return, any tax return information that the tax return preparer obtained from a first taxpayer if—

(i) The second taxpayer is related to the first taxpayer within the meaning of paragraph (e)(2) of this section;

(ii) The first taxpayer's tax interest in the information is not adverse to the second taxpayer's tax interest in the information; and

(iii) The first taxpayer has not expressly prohibited the disclosure or use.

(2) For purposes of paragraph (e)(1)(i) of this section, a taxpayer is related to another taxpayer if they have any one of the following relationships: husband and wife, child and parent, grandchild and grandparent, partner and partnership, trust or estate and beneficiary, trust or estate and fiduciary, corporation and shareholder, or members of a controlled group of corporations as defined in section 1563.

(3) See § 301.7216-3 for disclosure or use of tax return information of the taxpayer in preparing the tax return of a second taxpayer when the requirements of this paragraph are not satisfied.

(f) *Disclosure pursuant to an order of a court, or an administrative order, demand, summons or subpoena which is issued in the performance of its duties by a Federal or State agency, the United States Congress, a professional ethics board, or the Public Company Accounting Oversight Board.* The provisions of section 7216(a) and § 301.7216-1 will not apply to any disclosure of tax return information if the disclosure is made pursuant to any one of the following documents:

(1) The order of any court of record, Federal, State, or local.

(2) A subpoena issued by a grand jury, Federal or State.

(3) A subpoena issued by the United States Congress.

(4) An administrative order, demand, summons or subpoena that is issued in the performance of its duties by—

(i) Any Federal agency as defined in 5 U.S.C. 551(1) and 5 U.S.C. 552(f), or

(ii) A State agency, body, or commission charged under the laws of the State or a political subdivision of the State with the licensing, registration, or regulation of tax return preparers.

(5) A written request from a professional ethics board investigating the ethical conduct of the tax return preparer.

(6) A formal demand from the Public Company Accounting Oversight Board to registered public accounting firms in connection with an inspection under section 104 of the Sarbanes-Oxley Act of 2002 (Act), 15 U.S.C. 7214, or an investigation under section 105 of the Act.

(g) *Disclosure for use in Treasury investigations or court proceedings.* A tax return preparer may disclose tax return information—

(1) To his attorney, or to an employee of the Treasury Department, for use in connection with any investigation of the tax return preparer (including investigations relating to the tax return preparer in its capacity as a practitioner) conducted by the IRS or the Treasury Department; or

(2) To his attorney, or to any officer of a court, for use in connection with proceedings involving the tax return preparer (including proceedings involving the tax return preparer in its capacity as a practitioner), or the return preparer's client, before the court or before any grand jury that may be convened by the court.

(h) *Certain disclosures by attorneys and accountants.* The provisions of section 7216(a) and § 301.7216-1 shall not apply to any disclosure of tax return information permitted by this paragraph (h).

(1)(i) A tax return preparer who is lawfully engaged in the practice of law or accountancy and prepares a tax return for a taxpayer may use the taxpayer's tax return information, or disclose the information to another officer, employee or member of the tax return preparer's law or accounting firm, consistent with applicable legal and ethical responsibilities, who may use the tax return information for the purpose of providing other legal or accounting services to the taxpayer. As an example, a lawyer who prepares a tax return for a taxpayer may use the tax return information of the taxpayer for, or in connection with, rendering legal services, including estate planning or administration, or preparation of trial briefs or trust instruments, for the taxpayer or the estate of the taxpayer. In addition, the lawyer who prepared the tax return may disclose the tax return information to another officer, employee or member of the same firm for the

purpose of providing other legal services to the taxpayer. As another example, an accountant who prepares a tax return for a taxpayer may use the tax return information, or disclose it to another officer, employee or member of the firm, for use in connection with the preparation of books and records, working papers, or accounting statements or reports for the taxpayer. In the normal course of rendering the legal or accounting services to the taxpayer, the attorney or accountant may make the tax return information available to third parties, including stockholders, management, suppliers, or lenders, consistent with the applicable legal and ethical responsibilities, unless the taxpayer directs otherwise. For rules regarding disclosing outside of the United States, see § 301.7216-2(c) and (d).

(ii) A tax return preparer's law or accounting firm does not include any related or affiliated firms. For example, if law firm A is affiliated with law firm B, officers, employees and members of law firm A must receive a taxpayer's consent under § 301.7216-3 before disclosing the taxpayer's tax return information to an officer, employee or member of law firm B.

(2) A tax return preparer who is lawfully engaged in the practice of law or accountancy and prepares a tax return for a taxpayer may, consistent with the applicable legal and ethical responsibilities, take the tax return information into account, and may act upon it, in the course of performing legal or accounting services for a client other than the taxpayer, or disclose the information to another officer, employee or member of the tax return preparer's law or accounting firm to enable that other officer, employee or member to take the information into account, and act upon it, in the course of performing legal or accounting services for a client other than the taxpayer. This is permissible when the information is, or may be, relevant to the subject matter of the legal or accounting services for the other client, and consideration of the information by those performing the services is necessary for the proper performance of the services. In no event, however, may the tax return information be disclosed to a person who is not an officer, employee or member of the law or accounting firm, unless the disclosure is exempt from the application of section 7216(a) and § 301.7216-1 by reason of another provision of §§ 301.7216-2 or 301.7216-3.

(3) The application of this paragraph may be illustrated by the following examples:

Example 1. A, a member of an accounting firm, renders an opinion on a financial statement of M Corporation that is part of a registration statement filed with the Securities and Exchange Commission. After the registration statement is filed, but before its effective date, B, a member of the same accounting firm, prepares an income tax return for N Corporation. In the course of preparing N's income tax return, B discovers that N does business with M and concludes that the information given by N should be considered by A to determine whether the financial statement opined on by A contains an untrue statement of material fact or omits a material fact required to keep the statement from being misleading. B discloses to A the tax return information of N for this purpose. A determines that there is an omission of material fact and that an amended statement should be filed. A so advises M and the Securities and Exchange Commission. A explains that the omission was revealed as a result of confidential information that came to A's attention after the statement was filed, but A does not disclose the identity of the taxpayer or the tax return information itself. Section 7216(a) and § 301.7216-1 do not apply to B's disclosure of N's tax return information to A and A's use of the information in advising M and the Securities and Exchange Commission of the necessity for filing an amended statement. Section 7216(a) and § 301.7216-1 would apply to a disclosure of N's tax return information to M or to the Securities and Exchange Commission unless the disclosure is exempt from the application of section 7216(a) and § 301.7216-1 by reason of another provision of either this section or § 301.7216-3.

Example 2. A, a member of an accounting firm, is conducting an audit of M Corporation, and B, a member of the same accounting firm, prepares an income tax return for D, an officer of M. In the course of preparing the return, B obtains information from D indicating that D, pursuant to an arrangement with a supplier doing business with M, has been receiving from the supplier a percentage of the amounts that the supplier invoices to M. B discloses this information to A who, acting upon it, searches in the course of the audit for indications of a kickback scheme. As a result, A discovers information from audit sources that independently indicate the existence of a kickback scheme. Without revealing the tax return information A has received from B, A brings to the attention of officers of M the audit information indicating the existence of the kickback scheme. Section 7216(a) and § 301.7216-1 do not apply to B's disclosure of D's tax return information to A, A's use of D's information in the course of the audit, and A's disclosure to M of the audit information indicating the existence of the kickback scheme. Section 7216(a) and § 301.7216-1 would apply to a disclosure to M, or to any other person not an employee or member of the accounting firm, of D's tax return information furnished to B.

(i) *Corporate fiduciaries.* A trust company, trust department of a bank, or other corporate fiduciary that prepares a tax return for a taxpayer for whom it

renders fiduciary, investment, or other custodial or management services may, unless the taxpayer directs otherwise—

(1) Disclose or use the taxpayer's tax return information in the ordinary course of rendering such services to or for the taxpayer; or

(2) Make the information available to the taxpayer's attorney, accountant, or investment advisor.

(j) *Disclosure to taxpayer's fiduciary.* If, after furnishing tax return information to a tax return preparer, the taxpayer dies or becomes incompetent, insolvent, or bankrupt, or the taxpayer's assets are placed in conservatorship or receivership, the tax return preparer may disclose the information to the duly appointed fiduciary of the taxpayer or his estate, or to the duly authorized agent of the fiduciary.

(k) *Disclosure or use of information in preparation or audit of State or local tax returns or assisting a taxpayer with foreign country tax obligations.* The provisions of paragraphs (c) and (d) of this section shall apply to the disclosure by any tax return preparer of any tax return information in the preparation of, or in connection with the preparation of, any tax return of the taxpayer under the law of any State or political subdivision thereof, of the District of Columbia, of any territory or possession of the United States, or of a country other than the United States. The provisions of section 7216(a) and § 301.7216-1 shall not apply to the use by any tax return preparer of any tax return information in the preparation of, or in connection with the preparation of, any tax return of the taxpayer under the law of any State or political subdivision thereof, of the District of Columbia, of any territory or possession of the United States, or of a country other than the United States. The provisions of section 7216(a) and § 301.7216-1 shall not apply to the disclosure or use by any tax return preparer of any tax return information in the audit of, or in connection with the audit of, any tax return of the taxpayer under the law of any State or political subdivision thereof, of the District of Columbia, of any territory or possession of the United States.

(l) *Payment for tax preparation services.* A tax return preparer may use and disclose, without the taxpayer's written consent, tax return information that the taxpayer provides to the tax return preparer to pay for tax preparation services to the extent necessary to process the payment. For example, if the taxpayer gives the tax return preparer a credit card to pay for tax preparation services, the tax return preparer may disclose the taxpayer's

name, credit card number, credit card expiration date, and amount due for tax preparation services to the credit card company, as necessary, to process the payment. Any tax return information that is not relevant to the payment may not be used or disclosed by the tax return preparer without the taxpayer's prior written consent, unless otherwise permitted under another provision of this section.

(m) *Retention of records.* A tax return preparer may retain tax return information of a taxpayer, including copies of tax returns, in paper or electronic format, prepared on the basis of the tax return information, and may use the information in connection with the preparation of other tax returns of the taxpayer or in connection with an examination by the Internal Revenue Service of any tax return or subsequent tax litigation relating to the tax return. The provisions of paragraph (n) of this section regarding the transfer of a taxpayer list also apply to the transfer of any records and related papers to which this paragraph applies.

(n) *Lists for solicitation of tax return business.* A tax return preparer may compile and maintain a separate list containing solely the names, addresses, e-mail addresses, and phone numbers of taxpayers whose tax returns the tax return preparer has prepared or processed. This list may be used by the compiler solely to contact the taxpayers on the list for the purpose of offering tax information or additional tax return preparation services to such taxpayers. 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. 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, includes any record or system whereby the names and addresses of taxpayers are retained. The provisions of this paragraph also apply to the transfer of any records and related papers to which this paragraph (n) applies.

(o) *Producing statistical information in connection with tax return preparation business.* A tax return preparer may use, for the limited purpose specified in this paragraph, tax return information to produce a statistical compilation of data described in § 301.7216-1(b)(3)(i)(B). The purpose and use of the statistical compilation must relate directly to the internal

management or support of the tax return preparer's tax return preparation business. The tax return preparer may not disclose or use the tax return information in connection with, or support of, businesses other than tax return preparation. The compiler of the statistical compilation may not transfer the compilation, or any part thereof, to any other person unless the transfer takes place upon the sale or other disposition of the tax return preparation business of the compiler. A person who acquires a compilation, 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 compilation as if the acquiring person had compiled it.

(p) *Disclosure or use of information for quality or peer reviews.* 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. Disclosure of tax return information is also authorized 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. Any person (including administrative and support personnel) receiving tax return information in connection with a

quality or peer review is a tax return preparer for purposes of sections 7216(a) and 6713(a).

(q) *Disclosure to report the commission of a crime.* The provisions of section 7216(a) and § 301.7216-1 shall not apply to the disclosure of any tax return information to the proper Federal, State, or local official in order, and to the extent necessary, to inform the official of activities that may constitute, or may have constituted, a violation of any criminal law or to assist the official in investigating or prosecuting a violation of criminal law. A disclosure made in the bona fide but mistaken belief that the activities constituted a violation of criminal law is not subject to section 7216(a) and § 301.7216-1.

(r) *Disclosure of tax return information due to a tax return preparer's incapacity or death.* In the event of incapacity or death of a tax return preparer, disclosure of tax return information may be made for the purpose of assisting the tax return preparer or his legal representative (or the representative of a deceased tax return preparer's estate) in operating the business. Any person receiving tax return information under the provisions of this paragraph (r) is a tax return preparer for purposes of sections 7216(a) and 6713(a).

(s) *Effective date.* This section applies on the date that is 30 days after the final regulations are published in the **Federal Register**.

Par. 5. Section 301.7216-3 is revised to read as follows:

§ 301.7216-3 Disclosure or use permitted only with the taxpayer's consent.

(a) *In general*—(1) *Taxpayer consent.* Unless section 7216 or § 301.7216-2 specifically authorizes the disclosure or use of tax return information, a tax return preparer may not disclose or use a taxpayer's tax return information prior to obtaining a consent from the taxpayer, as described in this section. The consent must be knowing and voluntary. As an example, a tax return preparer may not condition its provision of preparation services upon the taxpayer's consenting to a use of the taxpayer's tax return information. Except as provided in paragraph (a)(2) of this section, conditioning the provision of services on the taxpayer's furnishing consent will make the consent involuntary, and the consent will not satisfy the requirements of this section.

(2) *Taxpayer consent to a tax return preparer furnishing tax return information to another tax return preparer.* A tax return preparer may

condition its provision of preparation services upon a taxpayer's consenting to disclosure of the taxpayer's tax return information to another tax return preparer for the purpose of performing services that assist in the preparation of, or provide auxiliary services in connection with the preparation of, the tax return of the taxpayer.

(3) *Guidance describing the form and contents of taxpayer consents.* The Commissioner may issue guidance, by revenue procedure, describing the form and content of taxpayer consents authorized under this section.

(b) *Timing requirements and limitations*—(1) *No retroactive consent.* A taxpayer must provide written consent before a tax return preparer discloses or uses the taxpayer's tax return information.

(2) *Time limitations on requesting consent.* A tax return preparer may not request a taxpayer's consent to use or disclose tax return information after the tax return preparer provides a completed tax return to the taxpayer for signature.

(3) *No requests for consent after an unsuccessful request.* With regard to tax return information for each income tax return that a tax return preparer prepares, if a taxpayer declines a request for consent to the use or disclosure of tax return information, the tax return preparer may not make another request to obtain consent for a purpose substantially similar to that of the rejected request.

(4) *Duration of consent.* No consent to the use or disclosure of tax return information may be effective for a period longer than one year from the date the taxpayer signed the consent.

(c) *Special rules*—(1) *Multiple disclosures within a single consent form or multiple uses within a single consent form.* A taxpayer may consent to multiple uses within the same written document, or multiple disclosures within the same written document. A single written document, however, cannot authorize both uses and disclosures; rather one written document must authorize the uses and another separate written document must authorize the disclosures. Furthermore, a consent that authorizes multiple uses or multiple disclosures must specifically and separately identify each use or disclosure.

(2) *Disclosure of entire return.* A consent may authorize the disclosure of all information contained within a return. A consent authorizing the disclosure of an entire return must set forth an explanation of the reasons why a consent authorizing a more limited disclosure of tax return information is

unsatisfactory for the purpose of the consent.

(3) *Copy of consent must be provided to taxpayer.* The tax return preparer must provide a copy of the executed consent to the taxpayer at the time of execution. The requirements of this paragraph may also be satisfied by giving the taxpayer the opportunity, at the time of executing the consent, to print the completed consent or save it in electronic form.

(d) *Permissible disclosures to third parties at the request of the taxpayer.* A tax return preparer may disclose tax return information to third parties as the taxpayer directs so long as the taxpayer provides a consent to disclose tax return information that satisfies the requirements of this paragraph and as prescribed by the Commissioner by revenue procedure. (See § 601.601(d)(2) of this chapter.)

(e) *Effective date.* This section applies on the date that is 30 days after the final regulations are published in the **Federal Register**.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05-05-130]

RIN 1625-AA08

Special Local Regulations for Marine Events; Chesapeake Bay

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary special local regulation during the "Volvo Ocean Race 2005-2006", sailboat races to be held on the waters of the Chesapeake Bay in the vicinity east of Gibson Island, Maryland and near the William Preston Lane Jr. Memorial (Chesapeake Bay) Bridge near Annapolis, Maryland. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in segments of the Chesapeake Bay during the sailboat races.

DATES: Comments and related material must reach the Coast Guard on or before February 6, 2006.

ADDRESSES: You may mail comments and related material to Commander (oax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004, hand-deliver them to Room 119 at the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays, or fax them to (757) 398-6203. The Auxiliary and Recreational Boating Safety Branch, Fifth Coast Guard District, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Houck, Project Manager, Marine Information Specialist, U.S. Coast Guard Sector Baltimore, at (410) 576-2674.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05-05-130), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the address listed under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

During April and May 2006, Ocean Race Chesapeake, Inc. will host the Chesapeake Bay visit of the "Volvo Ocean Race 2005-2006". Two sailboat racing events are planned during this period to be conducted on the waters of the Chesapeake Bay in the vicinity of the William Preston Lane Jr. Memorial (Chesapeake Bay) Bridge near

Annapolis, Maryland. The first event will be the "In Port Race" on April 29, 2006 that will take place on the Chesapeake Bay approximately 5 miles east of Gibson Island, Maryland and about 8 miles north of the Chesapeake Bay Bridge. The second event will be the "Leg 6 Re-Start" of the 2005-2006 Volvo Round the World Race, on May 7, 2006 that will take place on the Chesapeake Bay between Thomas Point and Sandy Point, near Annapolis, Maryland.

Both events will consist of approximately eight 70-foot long sailing vessels that will participate in both the "In Port Race" and a carefully organized "Re-Start" to a highly publicized, international sailing race. The restart will consist of opposing teams that will be maneuvering in a predetermined area within the Chesapeake Channel adjacent to the William P. Lane Jr. Memorial (Chesapeake Bay) Bridge Main Channel Span. A fleet of spectator vessels is anticipated to gather nearby to view the competition for both events. Because of the danger posed by many sailing vessels maneuvering in close proximity of each other during the in port race and at the beginning of the race restart, special local regulations are necessary. For the safety concerns noted and to address the need for vessel control to facilitate a fair and accurate restart, vessel traffic will be temporarily restricted to provide for the safety of participants, spectators and transiting vessels.

Discussion of Proposed Rule

The Coast Guard proposes to establish temporary special local regulations on specified waters of the Chesapeake Bay. The "In Port Race" segment of the regulated area will include a square-shaped section of the Chesapeake Bay, four nautical miles long on each side, located approximately 17 nautical miles southeast of Baltimore's Inner Harbor. The center of the race course is approximately five nautical miles east of Gibson Island, Maryland. The duration of the race is expected to be three hours and spectator anchorage areas will be designated. The "Leg 6 Re-Start" segment of the regulated area will include a rectangle-shaped area of the Chesapeake Bay, 6 nautical miles long and 1.5 nautical miles wide, located approximately 13 nautical miles east of Annapolis Harbor. The actual starting line for this event lies south of the William P. Lane, Jr. Memorial (Chesapeake Bay) Bridge, Maryland. The duration of the event is expected to be three hours and spectator anchorage areas will be designated. The temporary special local regulations will be