



Neighborhood Economic Development Advocacy Project

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CC:PA:LPD:PR (REG-137243-02)
Room 5203
Internal Revenue Service
PO Box 7604
Ben Franklin Station
Washington, DC 20044

Via website at: <http://www.irs.gov/regs>

Re: REG-137243-02 [RIN-1545-BA96] and Revenue Procedure 2005-93

Dear Sir/Madam:

We are writing to comment on the Internal Revenue Service's notice of proposed rulemaking dated December 8, 2005 revising its privacy regulations governing tax preparers. This proposed rule would establish the exceptions to the protections of Section 7216 of the Internal Revenue Code, 26 U.S.C. § 7216. We join with the National Consumer Law Center and other national advocacy organizations in opposing provisions of the proposal that would reduce overall privacy protections for taxpayers and urge the IRS to follow the recommendations set forth below.

The Neighborhood Economic Development Advocacy Project (NEDAP) is a resource and advocacy center that works with community groups to promote community reinvestment in low income neighborhoods in New York City. In recent years, NEDAP has done extensive work on tax-related issues, particularly to combat abusive tax refund anticipation loans (RALs).

While we applaud the IRS for making a few improvements, such as requiring consent for off-shoring of taxpayer information, we believe the proposed rule must be significantly strengthened in order for it to provide real protections for taxpayer privacy.

First, we believe that the IRS should eliminate the exception allowing tax preparers to obtain the taxpayer's consent to use confidential tax return information to cross-market ancillary products. This consent exception for marketing that has enabled the growth of the \$1 billion RAL industry, enabling the industry to exploit the high level of trust that exists in the relationship between taxpayers and their paid preparers.

In addition to RALs, tax preparers sell other unrelated financial products such as Individual Retirement Accounts, mortgages (including potentially subprime mortgages) and investment products. In fact, the largest commercial preparation chain, H&R Block, is

expanding its business model based on cross marketing using tax return information and the strong trust relationship between a taxpayer and preparer.¹ Block publicly has boasted about its ability to exploit confidential tax information. In an interview with *American Banker*, Block CEO Mark Ernst stated that Block advisors know “virtually everything” about their clients’ financial lives, so “we can use it to their advantage and our advantage to customize advice unique to their financial situation.” Mr. Ernst is further quoted as stating, “Clients are willing to share their information. We have a relationship with millions of clients who come to our door once a year, and when they come to our doorstep, they bring all their personal information and effectively pay us to update our database.”²

If the consent exception for marketing is not eliminated, it should be greatly curtailed by limiting it to identity information and requiring some sort of cooling down period. Furthermore, the IRS must improve the requirements for the consent form so that the taxpayer’s consent is truly meaningful and knowing. All too often, taxpayers often do not give their consent as an affirmative, conscious and deliberate act -- the consent form or forms become just another piece of paper to be signed by taxpayers.

While we support and appreciate the new protections added to consent forms by the proposed revenue procedure, the IRS must go further. Forms must require active entry of unusual information such as an SSN or typing a consumer’s name into a computer screen, not just a signature, which can be routinized during a tax preparation session. There must be protections for low literacy and limited English speaking taxpayers.

Ensuring that preparers give taxpayers the consent for cross-marketing is important because once a consumer has agreed to buy a product, she is unlikely to back out as a result of a consent form or any other paperwork, because she has psychologically committed to product. As one consumer put it, after having told the tax preparer she wanted a RAL “at this point, I was confused and didn’t feel like I could change my mind because she had already finished all the paperwork.”³ Another consumer stated “I was under the impression that having made my choice it was too late to back out of it.”⁴

Furthermore, the IRS must drop changes in the proposed rule that allow preparers to seek consent for disclosure of return information to third parties for marketing purposes. In particular, the IRS has proposed removing the “affiliated group” restriction, *i.e.*, the restriction that limits cross-marketing using tax return information to only products offered by the tax preparer or its affiliated entities. The removal of this restriction will enable tax preparers to seek consent to give tax return information to third parties for the purpose of having these third parties solicit the taxpayers. Once in the hands of a third party, the protections of Section 7216 will not apply.

¹ Peter Tufano and Daniel Schneider, *H&R Block and “Everyday Financial Services,”* Harvard Business School, October 2004, at 3.

² David Breitung, “H&R Block CEO Touts Cross-Sales Goals, *American Banker*, May 9, 2003, at 11.

³ Statement of Julie Burbach before the U.S. Senate Permanent Subcommittee on Investigations, Hearing On Tax Related Financial Products Can Be Costly, April 15, 2005.

⁴ Statement of Maerine Henderson before the U.S. Senate Permanent Subcommittee on Investigations, Hearing On Tax Related Financial Products Can Be Costly, April 15, 2005.

Since there is no prohibition against preparers receiving compensation for disclosing taxpayer return information to third parties, the proposed rule will permit tax preparers to sell databases of highly sensitive and personal information to the highest bidder. Given the recent highly publicized instances of data security breaches, the IRS should not be creating the ability to freely trade in taxpayer return information.

Finally, the IRS should ask Congress to increase the penalties for violation of Section 7216 and to give taxpayers the right to seek redress when their rights are violated. Without adequate penalties and enforcement, the protections of Section 7216 are meaningless.

Sincerely,

Sarah Ludwig
Co-Director

Chris Keeley
Program Associate