



Treasury Decisions  
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DEPARTMENT OF THE TREASURY  
Internal Revenue Service

26 CFR Parts 301 and 602

*56 FR 66995*

Disclosure of Tax Return Information for Purposes of Quality or Peer Reviews; Due to Incapacity or Death of Tax Return Preparer

*T.D. 8383*

**DATE:** December 27, 1991

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations § 301.7216-2(o) prescribing the circumstances under which tax return information may be disclosed for purposes of conducting quality or peer reviews. These regulations are necessary to provide tax return preparers with the guidance needed to comply with changes to the applicable law made by the Omnibus Budget Reconciliation Act of 1989. This document also contains final regulations § 301.7216-2(p) regarding disclosures necessitated by a tax return preparer's incapacity or death.

**DATES:**

**EFFECTIVE DATE:** These regulations are effective on December 28, 1990. Display Classification Information Display Classification Information Display Classification Information Display Classification Information Display Classification Information Display Classification Information

**ADDRESSES:**

**FOR FURTHER INFORMATION CONTACT:** David L. Meyer, Office of the Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:CORP:T:R), or by telephone at 202-566-5985 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Paperwork Reduction Act**

The collection of information contained in these regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980, (*44 U.S.C. 3504(h)*), under control number 1545-1209. The estimated annual burden per recordkeeper varies from 15 minutes to 2 hours, depending on individual circumstances, with an estimated average of 1 hour.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual recordkeepers may require greater or less time, depending on their particular circumstances.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Attn: IRS Reports Clearance Officer T:FP, Washington, DC 20224, with copies to the Office of Management and Budget, Attention: Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

### **Background**

These regulations were published in temporary and proposed form in the Federal Register on December 28, 1990 (*55 FR 53295*, *55 FR 53313*). This document adds rules under section 7216(b)(3) of the Internal Revenue Code of 1986 to the Regulations on Procedure and Administration (26 CFR part 301). A number of comments were received in response to the notice of proposed rulemaking. A public hearing was held on June 3, 1991. After consideration of the public comments received, the regulations are adopted as revised by this Treasury decision.

### ***Explanation of Provisions***

The explanation contained in the preamble to the temporary regulations applies equally to the final regulations except as described below.

The temporary regulations define a quality or peer review as a review that is undertaken to evaluate, monitor, and improve the quality and accuracy of a tax return preparer's tax preparation services. Some commentators suggested that the definition is too broad and might defeat the statutory purpose of maintaining the confidentiality of tax return information. Other commentators suggested that this definition is too restrictive. They noted that some preparers must undergo a review of their auditing and accounting services to satisfy government concerns. While these reviews are only incidentally related to tax return preparation, tax return information sometimes must be disclosed to properly complete the review. The commentators are concerned that the definition in the temporary regulations will not allow these reviews to be accomplished.

The final regulations slightly expand the definition of a quality or peer review to include accounting and auditing services. It is believed that concerns about unauthorized disclosures or uses of tax return information are adequately addressed by the safeguards contained in the regulations together with the criminal and civil penalties of sections 7216(a) and 6713 of the Code. The safeguards contained in the regulations include: (a) Limiting the scope of reviews to address only tax return preparation, accounting, and auditing services; (b) requiring that any taxpayer identifying information be excised from any final evaluative reports that may be accessible to anyone other than the reviewer or the preparer being reviewed; (c) treating any person who obtains tax return information in the course of a review as a tax return preparer for purposes of sections 7216(a) and 6713(a) of the Code; and (d) limiting those who may conduct reviews to persons who are subject to the provisions of Treasury Department Circular 230 ("Circular 230").

Persons permitted to conduct quality or peer reviews under the temporary regulations (i.e. persons subject to Circular 230) are attorneys, certified public accountants, enrolled agents, and enrolled actuaries who are not under suspension or disbarment from practice before the Service. Some commentators suggested that the classes of persons permitted to conduct a quality or peer review be expanded to include non-certified, licensed public accountants ("LPAs") who are neither enrolled agents, nor otherwise eligible to practice before the Service. Unenrolled LPAs are not subject to the provisions of Circular 230. The Service believes that permitting only persons subject to Circular 230 to conduct a quality or peer review helps to prevent unauthorized disclosures of tax return information. Accordingly, the final regulations do not adopt this suggestion.

Finally, some commentators suggested that the temporary regulations should be revised to permit franchisees to disclose tax return information to their franchisor for purposes that are unrelated to a quality or peer review. Along

similar lines, one commentator suggested that a franchisor's employees who are not eligible to practice before the Service should nonetheless be permitted to conduct quality or peer reviews. Neither suggestion was adopted. The first suggestion raised concerns that were not within the scope of these regulations. The second suggestion would not further the statutory purpose of maintaining the confidentiality of tax return information.

### ***Special Analyses***

These rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. Although this Treasury decision was preceded by a notice of proposed rulemaking that solicited public comments, the notice was not required by 5 U.S.C. 553 since the regulations proposed in that notice and adopted by this Treasury decision are interpretive. Therefore, a final Regulatory Impact Analysis is not required by the Regulatory Flexibility Act (5 U.S.C. chapter 6). Pursuant to section 7805(f) of the Internal Revenue Code, a copy of the temporary and proposed regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

### **Drafting Information**

The principal author of these regulations is David L. Meyer, Office of Assistant Chief Counsel, Income Tax and Accounting, Internal Revenue Service. However, personnel from other offices of the IRS and Treasury Department participated in their development.

### **List of Subjects**

#### ***26 CFR Part 301***

Administrative practice and procedure, Alimony, Bankruptcy, Child support, Continental shelf, Courts, Crime, Disclosure of information, Employment taxes, Estate taxes, Excise taxes, Filing requirements, Gift tax, Income taxes, Investigations, Law enforcement, Oil pollution, Penalties, Pensions, Reporting and recordkeeping requirements, Statistics, Taxes.

#### ***26 CFR Part 602***

Reporting and recordkeeping requirements.

### **Amendments to the Regulations**

For the reasons set forth in the preamble, 26 CFR parts 301 and 602 are amended as follows.

#### **PART 301 -- PROCEDURE AND ADMINISTRATION**

Paragraph 1. The authority for part 301 is amended by adding the following citation to read:

Authority: Sec. 7805, I.R.C. 1954; 68A Stat. 917; 26 U.S.C. 7805 \* \* \* Section 301.7216-2, paragraphs (o) and (p) also issued under 26 U.S.C. 7216(b)(3).

Par. 2. The authority citation located at the end of § 301.7216-2 is removed and § 301.7216-2 is amended by adding paragraphs (o) and (p) to read as follows:

§ 301.7216-2 Disclosure or use without formal consent of taxpayer.

\* \* \* \* \*

(o) *Disclosure or use of information for quality or peer reviews.* The provisions of section 7216(a) and §

301.7216-1 do not apply to any disclosure of tax return information permitted by this paragraph (o) made after December 28, 1990. Tax return information may be disclosed 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 (o), 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 preparer being reviewed. The preparer being reviewed shall 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).

(p) *Disclosure of tax return information due to a tax return preparer's incapacity or death.* The provisions of section 7216(a) and § 301.7216-1 do not apply to any disclosure of tax return information permitted by this paragraph (p) made after December 28, 1990. 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 preparer's estate) in operating the business. Any person receiving tax return information under the provisions of this paragraph (p) is a tax return preparer for purposes of sections 7216(a) and 6713(a).

Par. 3. Section 301.7216-2T is removed.

#### PART 602 -- OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority for part 602 continues to read as follows:

Authority: (26 U.S.C. 7805).

Par. 5. The table of OMB Control Numbers in § 602.101 is amended by revising the entry in the table for "§ 301.7216-2T" to read as follows:

"§ 301.7216-2(o) \* \* \* 1545-1209".

**Fred T. Goldberg, Jr.,**

Commissioner of Internal Revenue.

Approved: December 5, 1991.

**Kenneth W. Gideon,**

Assistant Secretary of the Treasury.

[FR Doc. 91-30712 Filed 12-26-91; 8:45 am]

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