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PRIVACY AND THE IRS

Privacy is becoming a rare commodity in today's technological age. Amateurs can easily gather all sorts of your private information with a high speed Internet connection. Professionals, who have advanced software tools, can learn even more. While most people have nothing to hide, they nevertheless don't wish for their business dealings, investment relationships and financial information to be readily available to those who might have an interest in exploiting your highly personal and confidential information.

If these vulnerabilities aren't enough, along comes the government in the form of the Internal Revenue Service, proposing revisions allowing commercial tax return preparers to share (sell?) confidential taxpayer information to third party data brokers for marketing purposes. On January 17th of this year the IRS issued a Bulletin named "Notice of Proposed Rulemaking Guidance Necessary to Facilitate Electronic Tax Administration – Updating of Section 7216 Regulations".

Internal Revenue Code Section 7216 was to work to prohibit tax return preparers from using or disclosing tax return data unless Congress specifically allowed a certain type of transaction. In 1988, for example, Section 7216 was amended to penalize unauthorized disclosures to third parties that were "knowingly or recklessly" made by the tax preparer. At that time the IRS seemed concerned about the secondary marketing use of tax information. The means around violating those rules centered on a taxpayer making a "knowing and voluntary consent" to his or her personal information being disclosed.

The Bulletin issued January 17th opens up the doors for tax return preparers to seek consent from a taxpayer to disclose information to third parties. The Bulletin specifically states: *The current regulations do not place limits on tax return preparer's 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.*

What this means is that the proposed regulations allow tax return preparers to obtain consents to use tax return

information for solicitation of services furnished by any person rather than limiting the solicitations to the services offered by the tax return preparer, such as the CPA, its firm or affiliated service group.

This stealth regulation (whose misnomer is "Regulation to Safeguard Taxpayer Information") creates exceptions to, long-held law clearly forbidding sharing tax return information. While you may have picked up that the regulations still require "consent", how easy would it be for the commercial tax return services, the software tax preparation programs or other preparers to include a "standard" consent at the end of their documents? While some taxpayers may wisely read and not sign or click on a "consent", I would suspect many would not even bother to review what they are consenting to.

Most honorable and reputable CPA firms would not choose to even have their clients sign such consent. Those are not the firms that worry me. It is the "tax mills" and software companies that heighten my concern when reading these proposed regulations. What is to stop the firm that not only prepare tax returns, but offer financial products, such as annuities, life insurance and mutual funds from using the data mined in the return to push those additional products or services?

What about those firms that outsource tax preparation to far-off places like India? Already we have Internet and email scams where ingenious criminals make an email look like it is coming from the bank or even one circulating that looks like it comes from the IRS. Just put your credit card number or bank account number on this electronic form and they will electronically transfer money. Unfortunately, that transfer is usually from your account, not into your account, hence the scam. Imagine if those same criminals bought, on the open market, enough information about your most recent tax return to make their scam appear more legitimate.

These are difficult times, and privacy is quickly becoming a valuable asset. Guard it as you would anything else that is valuable to you.

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